YEARBOOK OF EUROPEAN UNION AND COMPARATIVE LAW-YEUCL
Vol.2, 2023 Article 10

Loyal cooperation between Treaty of Lisbon and post Brexit period

Andreas Vakaloglou, Peter Shaw

DOI:10.5281/zenodo.10694216

Recommended Citation

Vakaloglou, A., Shaw, P. (2023). Loyal cooperation between Treaty of Lisbon and post Brexit period. *Yearbook of European Union and Comparative Law, vol. 2,* 425-495, Article 10

Available at:
https://yeucl.free.nf/index.php/yeucl/issue/current

Loyal cooperation between Treaty of Lisbon and post Brexit period

DOI:10.5281/zenodo.10694216

Andreas Vakaloglou, post PhD in European Union Law.
Peter Shaw, Post Ph.D, UK

Abstract: The present paper has as its objective of investigation the principle of loyal cooperation after its codification with the Treaty of Lisbon and the situation of Brexit in United Kingdom. Withdrawal from a treaty in relation to the principle of loyal cooperation is one of the argument of analysis. Furthermore, the problems, the doubts, the positive points are discussed through the doctrine used as well as of the jurisprudence of the Court of Justice of the European Union.

Keywords: loyal cooperation; treaty of Lisbon; post brexit period; CJEU; European Union law; withdrawal from a treaty.

Introduction

The trouble was over and the Brexit of the United Kingdom was a very important step for all the policies of the EU. The application of the loyal cooperation continues to be an important principle for the functioning and evolution of the EU (Craig, De

Bùrca, 2021). At the time the President of the European Commission spoke[1] about a clear violation of the principle of loyal cooperation according to Art. 4, par. 3 TEU (Mangas Martìn, 2018; Hatje, Terhecthte, Müller-Graff, 2018; Schwarze, Becker, Hatje, Schoo, 2019; Kellerbauer, Klamert, Tomkin, 2019; Berry, Homewood, Bogusz, 2019; Blanke, Mangiamelli, 2021)[2]. The principle of the loyal cooperation was codified with the treaty of Lisbon according to Art. 4, par. 3 TEU horizontally and to Art. 13, par. 2 TEU as also stated through the jurisprudence of the Court of Justice of the European Union (CJEU).

Our objective is to outline a small investigation where the principle of loyal cooperation will show and represent an action based on the jurisprudence of the CJEU as a true principle of instrument of European legal integration capable of speaking of a European and community ethos. The loyal cooperation certainly affects the position of the Member States in order to ensure their functioning in an institutional framework of a supranational nature where it respects the law and the identity elements (Abdereane, 2018). The mechanisms offered by international treaty law allow for forced withdrawal, i.e. the

1Speech of the President Jean-Claude Juncker to the plenary session of the European Parliament on the result of the referendum in the United Kingdom, 28 June 2016.

2Article 50 TEU also contains a third element, of lesser importance for this analysis: in paragraph 5, it provides that the withdrawing state may join the Union again following the withdrawal, according to the procedure of art. 49 TEU.

expulsion of states that systematically violate the fundamental values of the EU. In practice the management of the Brexit maintains the possibility of invoking obligations of loyalty even after a voluntary and non-compulsory exit. The principle of loyal cooperation is a process of gradual transformation which is also based on the traditional logic of good faith between the parties. The enhancement of mutual coordination mechanisms and the strengthening of the functional connection requires that EU law imposes itself on interstate relations since there is no cooperative link between Union law and international law (Da Silva Passos, 2019).

Principle of loyal cooperation from the Treaties of Rome to the Treaty of Lisbon

The general, structural and regulatory principles of EU together with the loyal cooperation is the cornerstone of the acquis communitario and according to Neframi for:

"(…) the effectiveness of EU law. It can (…) be considered as the tangible facet of the duty of loyalty, specified through obligations of loyal cooperation incumbent on the national authorities, including the national courts (…)"[3] (Neframi, 2010; Klamert, 2013; Neframi, 2015; Hillion, 2012; Klamert, 2014; Vara, Rodrìguez Sànchez-Tabernero, 2018; Östlund, 2019)[4].

The principle of attribution of competences to the extent that

3And in the same spirit also Klamert affirms that: "(…) effectiveness is nothing more than loyalty in disguise (…)".

4According to Klamert: "(...) loyalty produced some of the strongest 'ties that bind' the member States to the European Union. It is thus no exaggeration to claim that loyalty has been central to the development of Union Law since 1960s and that it still shapes its structure today (...)".

"(…) ils sont au cœur du conflit constitutionnel et du rapport des ordres juridiques européen et nationaux" (Neframi, 2015)

existed with explicit reference to loyal cooperation already in the Treaty of the European Economic Community (EEC) and partly reproduced by Art. 86 of the ECSC Treaty (Schwarze, Becker, Hatje, Schoo, 2019; Kellerbauer, Klamert, Tomkin, 2019; Berry, Homewood, Bogusz, 2019; Blanke, Mangiamelli, 2022)[5], where the Member States called:

"(...) a) to adopt all measures of a general or particular nature aimed at ensuring the execution of the obligations deriving from the Treaty or determined by the acts of the institutions of the Community, as well as to facilitate this last in the fulfillment of one's duties; b) to abstain from any measure that could risk compromising the achievement of the objectives of the Treaty (…)"(Kaczorowska-Ireland, 2016; Foster, 2017; Geiger, Khan, Kotzur, 2016; Oppermann, Classen, Nettsheim, 2016; Barnard, Peers, 2017; Nicola, Davvies, 2017; Poiares Maduro, Wind, 2017; Folsom, 2017; usherwood, Pinder, 2018; Decheva, 2018; Schütze, Tridimas, 2018; Chalmers, Davies, Monti, 2019; Martucci, 2019; Virseda Fernàndez, 2020; Haratwsch, Koenig, Pechstein, 2020).

It is a disposition limìnaire and

"(…) concentre et synthétise à la fois la volonté des fondateurs et les finalités assignées aux institutions (…)" (Constantinesco, 1987).

Art. 5 of EEC Treaty was intended as a pacta sunt servinda norm according to the principles of the international law and with the obligation to respect the acts adopted by the institutions[6].

5Art. 86 of the ECSC Treaty "(…) above all with regard to the second category of obligations which it laid down, that is, those not to do, in addition to having a less peremptory approach, had a more restricted scope, to the extent that it established that the States Members "undertake to refrain from any measure incompatible with the existence of the common market referred to in Articles 1 and 4", while Article 5 of the EEC Treaty stipulated that the Member States "refrain from any measure which risks jeopardizing the realization of the purposes of this Treaty (…)".

6CJEU, C-44/84, Hurd v. Jones of 15 January 1986, ECLI:EU:C:1986:2, I-00029, par. 38: "(…) it would be different if the application of a provision of the Treaties or of secondary Community law or the functioning of the Community institutions were hindered by a measure adopted in the context of the implementation of such a

This position, according to a tautological interpretation of art. 5 complained of demonstrating the existence of an obligation that respects rules, is binding for the Member States. The resulting obligations could be sufficient according to art. 5 in competition with the pacta sunt servanda principle. Sharing the non-autonomous nature of the duty of cooperation, they believed that art. 5 as a legal duty is read in conjunction with other provisions of the treaty and interpreted extensively as an independent obligation and an implied general obligation[7]. According to the CJEU:

"(…) in accordance with the general obligations imposed on Member States by art. 5 of the treaty, it must in fact behave, internally, in a manner consistent with the fact that it belongs to the Community and must, if necessary, modify the process of budget allocations so that it does not constitute an obstacle to the timely fulfillment of obligations incumbent upon it within the scope of the treaty (...)"[8].

A jurisprudence that has changed and modified over the years and:

"according to the principle of collaboration set out in Art. 5 Treaty EEC, it is the task of the judges of the Member States to guarantee the protection jurisdictional rights vested in individuals under the provisions of community law having direct effect (...)"[9].

---

convention concluded between the Member States outside the scope of application of the Treaties (...) the measure in question could be considered contrary to the obligations deriving from Art. 5, 2nd paragraph, of the EEC Treaty (...)". C-132/09, Commission v. Beligum of 30 November 2010, ECLI:EU:C:2010:562, I-08695, par. 40: "(...) it is probable that this different position is due to the merely accessory nature of the violation of the principle of sincere cooperation with respect to the alleged non-compliance, the latter being centered on the Headquarters Agreement (...)".

7CJEU, case 78-70, Deutsche Grammophon Gesellschaft mbH v. Metro-SB-Großmärkte GmbH & Co. KG of 8 June 1971, ECLI:EU:C:1971:59, I-00487.

8CJEU, case 30-72, Commission of the European Communities v. Italian Republic. Premiums for grubbing fruit trees of 8 February 1973, ECLI:EU:C:1973:16, I-00161.

9CJEU, C-68/79, Hans Just I/S of 27 February 1980, ECLI:EU:C:1980:57, I-

In particular in the old Deutsche Milchkontor case of 1983, the CJEU stated that:

"(...) in accordance with the general principles on which the institutional system of the Community is based on and govern the relations between the Community and the Member States. It is up to the latter, by virtue of Article 5 of the Treaty, to guarantee the implementation of community legislation on their territory, especially in the context of the common agricultural policy. If community law, including its general principles, does not contain common rules in this regard, the national authorities, to implement community legislation, act by applying the criteria of form and substance of their national law (...)" (Blanquet, 1994)[10].

The CJEU since the 1980s have followed a line based on directives regarding the role of the EC as guardian of the treaties by stating that:

"(…) Member States are required, pursuant to Article 5 of the EEC Treaty, to facilitate to the EC to carry out its tasks, which consist above all in supervising the application of the provisions of the Treaty as well as the provisions adopted by the institutions pursuant to the latter (...)"[11].

The use of the loyal cooperation with the good faith is noted for the first time through the Commission v. Germany case of 1990 (De Baere, Roes, 2015). The CJEU decided that:

"(…) a Member State, in implementing an EC regulation, encounters unforeseeable difficulties which make it absolutely impossible to fulfill the

---

00501. C-61/79, State Finance Administration v. Denkavit italiana Srl of 27 March 1980, ECLI:EU:C:1980:100, I-01205. C-811/79, State Finance Administration v. Ariete Spa of 10 July 1980, ECLI:EU:C:1980:195, I-02545. C-826/79, State Finance Administration v. MIREKO of 10 July 1980, ECLI:EU:C:1980:198, I-02559.

10CJEU, joined cases: C-205 to 215/82, Deutsche Milchkontor GmbH and others of 21 September 1983, ECLI:EU:C:1983:233., I-02633.

11CJEU, C-274/83, Commission of the European Communities v. Italian Republic of 28 March 1985, ECLI:EU:C:1985:148, I-01077, par. 42. C-192/84, Commission of the European Communities v. Hellenic Republic of 11 December 1985, ECLI:EU:C:1985:497, I-03967, par. 19. C-240/86, Commission of the European Communities v. Hellenic Republic of 24 March 1988, ECLI:EU:C:1988:4, I-01835, par. 27. C-65/91, Commission of the European Communities v. Hellenic Republic of 14 October 1992, ECLI:EU:C:1992:388, I-05245, par. 14. C-375/92, Commission of the European Communities v. Kingdom of Spain of 22 March 1994, ECLI:EU:C:1994:109, I-00923, par. 24.

obligations imposed by the said regulation, it must submit the problems encountered to the EC, proposing, at the same time, adequate solutions. In fact, the EC and the Member States, "given the mutual duties of loyal cooperation imposed on them by Article 5 of the EEC Treaty, must collaborate in good faith to overcome difficulties in the absolute observance of the provisions of the Treaty (...)"[12].

The sentence just cited was the basis for the use of good faith as a sort:

"(...) of semantic extension of loyal cooperation and, therefore, as a reinforcement, to underline the need for an honest and proactive way of interaction between the Member States and the Commission (…)" (Klamert, 2014).

The CJEU did not reconnect the duty of cooperation to the international law principle of good faith, because loyal cooperation differs from the internationalist principle of good faith (Roes, 2015; Cremona, 2018). The loyal cooperation was only to ensure the execution and full effectiveness of the law of the EU as an obligation to act in accordance with the spirit of collaboration to achieve the objectives of the Union. Already in the Wightman case we can identify some main arguments that are based on the principles and objectives of Union law[13]. The first argument has to do with the broader objective of the Union, namely that of creating: "an ever closer Union between the peoples of Europe"[14]. And why so? The Advocate General already states that:

"(...) the objective of creating an ever closer Union argues in favor of an interpretation of the rules of Union law aimed at strengthening the Union itself, and not dissolving it (...) the "favor societatis was considered a key

12CJEU, C-217/88, Commission of the European Communities v. Federal Republic of Germany of 10 July 1990, ECLI:EU:C:1990:290, I-02879, par. 33.

13CJEU, C-621/18 Wightman and others, of 10 December 2018, op. cit., par. 131.

14CJEU, C-621/18 Wightman and others, of 10 December 2018, op. cit., par. 67.

evaluation element in order to identify the most compliant solution with the continuation, and not the (partial) disintegration, of any associative phenomenon in which very deep ties have been created (...)"[15].

The loyal cooperation does not require the fulfillment of an obligation aimed at guaranteeing the effective affirmation of a new legal order, namely that of the EU (Bouveresse, Ritleng, 2018). The CJEU already in the Hellenic Republic v. Council case of 1988 stated:

"(...) that in the context of the dialogue that the institutions must maintain for the purposes of adopting the budget the same mutual obligations of loyal cooperation prevail (…) governing the relations between the Member States and the community institutions (...)"[16].

The application of the principle of loyal cooperation in terms of vertical relationships starting from the early 1990s recognized a:

"(...) obligation of loyal cooperation with the judicial authorities of the Member States responsible for supervising the application and compliance with the Community law in the national legal system (...) should provide the latter with useful information to carry out their functions (...)"[17].

In the First NV and Franex NV case it was stated that:

"(...) Article 5 Treaty EEC, that meanwhile become Article 10 TEC, not only obliges the Member States to adopt all measures aimed at guaranteeing the scope and effectiveness of Community law, but also imposes on the Community institutions mutual obligations of loyal collaboration with the Member States (...)[18]. (…) if a national judge needs information that only the EC can provide, the principle of sincere cooperation provided for in Article 10 EC in principle requires the latter to communicate as soon as possible in short term the said information if it is requested by the national judge, unless the refusal of such communication is justified by imperative reasons relating to the need to avoid obstacles to the functioning and independence of the

15CJEU, C-621/18 Wightman and others, of 10 December 2018, op. cit., parr. 133-134.

16CJEU, C-204/86, Hellenic Republic v. Council of 27 September 1998, ECLI:EU:C:1988:450, I-05323, par. 16.

17CJEU, C-234/89, Stergios Delimitis v. Henninger Bräu AG of 28 February 1991, ECLI:EU:C:1991:91, I-00935, par. 55. C-2/88 Imm, J.J. Zwartveld and others of 6 December 1990, ECLI:EU:C:1990:440, I-04405, par. 10.

18CJEU, C-275/00, First and Franex of 26 November 2002, ECLI:EU:C:2002:711, I-10943, par. 49.

Community or to safeguard its interests (...)"[19].

In our opinion, loyal cooperation constituted an autonomous obligation linked to duties deriving from other provisions of the treaties or from other provisions of secondary law. From a vertical perspective, no obligations are imposed (Blanquet, 1994)[20] to Member States. This it developed on a horizontal level with inter-institutional relationships.

Towards and after the Treaty of Lisbon

As a principle, loyal cooperation has some characteristics. The horizontal perspective of loyal cooperation concerns interstate relations, while the vertical one deals with the obligations of Member States towards the institutions and is definitive as a type of mutual loyalty nature in relation to interinstitutional relations (Klamert, 2019). The vertical covers all the obligations that exist between the supranational and national levels, i.e. between the states and the European institutions. The horizontal discipline groups together with mutual obligations between entities are positioned to institutions and member countries. The discipline is provided for by Art. 4, par. 3 TEU as required by Art. 10 TEC (Blanke, Mangiamelli, 2021). Instead, Art. 4 TEU, lett. a) contains an explicit general statement of the loyal cooperation, where:

19CJEU, C-275/00, First and Franex of 26 November 2002, op. cit., par. 50.

20"(...)on ne peut tirer de cette disposition des obligations de la Communauté (…)".

"the Union and the Member States respect and assist each other in the fulfillment of the tasks deriving from the treaties (…)" (Schwarze, Becker, Hatje, Schoo, 2019; Kellerbauer, Klamert, Tomkin, 2019; Berry, Homewood, Bogusz, 2019; Blanke, Mangiamelli, 2021).

The CJEU in this regard has clarified that a general application does not depend on the specific nature of a matter (Erlbacher, 2017; Kuijper, Amtennbrink, Curtin, De Witte, Mcdonnell, 2018; Peeters, Eliantonio, 2020; Wessel, Larik, 2020)[21]. This rule refers to vertical and horizontal obligations, especially those of the Member States among themselves, i.e. for interinstitutional relations regulated by the provision of Art. 13 TEU (Schwarze, Becker, Hatje, Schoo, 2019; Kellerbauer, Klamert, Tomkin, 2019; Berry, Homewood, Bogusz, 2019; Blanke, Mangiamelli, 2021) stating that:

"(…) the Union Loyalty is less about the horizontal bond and more about the vertical relationship between the Union and the member States (…)" (Klamert, 2014).

The CJEU in 2016 stated in relation to the European arrest warrant that:

"(...) the executing state, before handing over a person, must ensure that the conditions of detention in the issuing state comply with Art. 4 of the CFREU, relating to the prohibition of inhuman or degrading punishment or treatment (…)" (Mansell, 2011; Tinsley, 2013; Smith, 2013; Sybersma-Knol, 2014; Foster, 2017; Swoboda, 2015; Bachmaier, 2015; Vervaele, 2015; Gàspàr-Szilàgy, 2016; Bovend'eerdt, 2016; Guirresse, 2016; Niblock, 2016; Broberg, Fenger, 2016)[22].

21CJEU, C-246/07, Commission v. Sweden of 20 April 2010, ECLI:EU:C:2010:203, I-03317, par. 71.

22CJEU, joined cases C-404/15 and C-659/15, P. Aranyosi and R. Căldăraru of 5 April 2016, ECLI:EU:C:2016:198, published in the electronic Reports of the cases. According to Niblock: "(…) in particular the attitude of the Luxembourg courts in relation to the interpretation of the principle of mutual recognition and mutual trust in civil procedural matters is intended to align with the "warnings" enucleated by the European Court in Avotinš. The reasons behind the less rigorous interpretation of this

The authority of the state on its territory was responsible for the detention of a positive obligation which consists in ensuring that each prisoner has conditions that guarantee respect for human dignity. If the executing judicial authority does not offer relevant information regarding provisions that are sufficient to take a decision on surrender, it may request additional

principle in the aforementioned ruling-based on the derivation of a new mandatory reason for non-execution of a European arrest warrant, where such execution exposes the person concerned to the actual risk of suffering treatment inhuman or degrading-they can not in fact move perfectly within the civil procedural matter, considering the ontological difference of the fundamental rights at stake (…)". According to the relevant sentence: "(…) the CJEU has gone further on the mutual recognition and has been based on another interpretative way stating that Art. 3 of the ECHR and 4 of the CFREU must be interpreted: "(...) in a convergence between them (...)". In particular the Advocate General Yves Bot which is affirmed that: "(...) In the AG's search for balance he considers first whether Article 1(3) FDEAW constitutes a ground for non-execution of an arrest warrant. He rejects such a notion for the following three reasons. First off, interpreting Article 1(3) as a non-execution ground would run counter to the phrasing of that Article, which due to its place and wording does not express a non-execution ground, but rather the principle of mutual trust. Secondly, such a notion would not be in agreement with the EU legislator's intent to create a system of surrender with exhaustively enumerated non-recognition grounds, whereby, in addition to the grounds in Articles 3, 4, and 4a FDEAW, only in the exceptional circumstances described in Recitals (10) and (13) surrender can be suspended or removal, expulsion or extradition can be prohibited. Last, a ground of non-recognition in Article 1(3) would severely damage mutual trust between judicial authorities on which the Framework Decision is based and would, as a result, make the principle of mutual recognition meaningless (…) that of proportionality as a balancing of interests and the widening of the discretionary sphere of the internal judge, and the circumstances in speciem. Criminal cooperation does not seem to be comparable with the similar ground and dates back to the experience of the single market, in terms of decisive jurisprudential protagonism. Let us not forget that criminal cooperation has been based on the definition of common minimum standards for delineating spaces and limits of cooperation between judicial and police authorities in the areas selected by the Member States and by the Union legislator. Of course we can speak of a positive and normative unification for years in the criminal sector and especially after the Treaty of Lisbon the merit belongs to the principle of mutual recognition of judicial decisions which continues to guarantee a median solution to integration that is summarized in the protection of rights fundamental rights, the inalienable rights of individuals and a continuous progress dictated by the Member States towards an increasingly active and proactive contribution, a harbinger of innovations and achievements with the main objective among others the continuous accelerated integration but within a harmonious development and development of all the

information from the respective issuing judicial authority. In 2018, the CJEU specified:

"(...) must not end up paralyzing the functioning of the European arrest warrant, since this would be (...) incompatible with the obligation of loyal cooperation enshrined in Article 4, par. 3, first paragraph, TEU, on which the dialogue between the executing judicial authorities and the issuing judicial authorities must be based, in particular, on the context of the communication of information referred to in Article 15, paragraphs 2 and 3, of the framework decision (on the European arrest warrant) (...)"[23].

The principle of loyal cooperation can also be linked to the principle of solidarity with various nuances (Casolari, 2014). Solidarity is at the basis of the principle of loyal cooperation[24] and is achieved through concrete implementation of this obligation with reference to relocation systems established according to Art. 78, par. 3, TFEU (Blanke, Mangiamelli, 2021)[25], constituting one of the few concrete examples of application based on the principle of solidarity and in the context of the management of migratory flows[26]. The CJEU

individual interest and not the state one (…)".

23CJEU, C-220/18 PPU, Generalstaatsanwaltschaft (Conditions de détention en Hongrie) of 25 July 2018, ECLI:EU:C:2018:589, published in the electronic Reports of the cases, par. 104.

24In different terms, however, other authors have argued that loyal cooperation maintains its autonomy with respect to the principle of solidarity, referred to in art. 80 TEU, which is characterized by a greater intensity of the support requested from the Member States.

25Council Decision (EU) 2015/1523 establishing temporary measures in the field of international protection for the benefit of Italy and Greece, 14 September 2015, in the GUUE of 15 September 2015, L 239, pp. 146-155; Council Decision (EU) 2015/1601 establishing temporary measures in the field of international protection for the benefit of Italy and Greece, 22 September 2015, in the OJ of 24 September 2015, L 248, p. 80-94.

26In this regard, it is worth recalling that, in the preamble, both decisions state that "in accordance with Article 80 TFEU, Union policies relating to border controls, asylum and immigration and their implementation must be governed by the principle of solidarity and fair sharing of responsibility between Member States, and the Union acts adopted in this area must contain appropriate measures for the application of this

stated that:

"(…) the correct application of these mechanisms depends on effective cooperation between Member States (…)" (De Witte, Tsourdi, 2018; Lenaerts, Bonichot, Kanninen, Naômè, Pohjankoski, 2019)[27].

In the Slovak Republic and Hungary case, the decisions are challenged before the CJEU, contesting above all the lack of effectiveness. The judges of the Luxembourg stated that:

"(...) the small number of relocations carried out to date in application of the contested decision can be explained by a set of elements that the Council could not foresee at the time of the adoption of the latter, including, in particular, the lack of cooperation of some Member States (...)[28] the sixth ground of appeal by the Slovak Republic, as it relates to the unsuitability of the contested decision to achieve the objective it pursued (...)"[29].

With the Treaty of Lisbon it is noted that the principle of loyal cooperation underlines the nature of the general principle of EU law by applying that the Member States and the Institutions in all matters governed by the treaties have recognized the applicability of loyal cooperation (Weyembergh, De Hert, Paepe, 2007; Lenaerts, Maselis, Gutman, 2014; Zipperle, 2017; Barav, 2017; Krans, Nylund, 2020)[30] underlining that the Union

principle".

27CJEU, joined cases C-643/15 to C-647/15, Slovak Republic and Hungary v. Council of 6 September 2017, ECLI:EU:C:2017:631, published in the electronic Reports of the cases.

28CJEU, joined cases C-643/15 to C-647/15, Slovak Republic and Hungary v. Council of 6 September 2017, op. cit., par. 38

29CJEU, joined cases C-643/15 to C-647/15, Slovak Republic and Hungary v. Council of 6 September 2017, op. cit., par. 39.

30In his conclusions on the Pupino case (CJEU, C-105/03, Pupino of 16 June 2005, ECLI:EU:C:2005:386, I-05285, par. 41. The Advocate General Juliane Kokott had stated: "the Italian and United Kingdom governments of the institutions is also the central object of Title VI of the Treaty on Union, and is found in the title-Provisions on police cooperation and judicial in criminal matters-and in almost all articles" (Opinion of Advocate General Juliane Kokott of 11 November 2004, case C-105/03, ECLI:EU:C:2004:712, parr. 25-26). These arguments were shared by the Court, which stated in its judgment: "(…) the second and third paragraphs of Article 1 of the Treaty on European Union provide that this Treaty marks a new stage in the process

legislation lacks a provision corresponding to Art. 10 EC. Even in the Union, Member States and institutions are bound by the obligation of mutual loyalty. In Art. 1 EC marks a new stage in the process of creating a Union based on organizing relations with Member States and their peoples in a coherent and supportive way. This aim cannot be achieved if the Member States and the Institutions of the Union do not cooperate loyally and correctly.

The scope of application of Art. 4, par. 3 TEU extends not only to matters of exclusive or concurrent competence but also to those of coordination and to those reserved for Member States, where:

"(...) it is precisely the principle of loyal cooperation that represents the most burdensome limit for purely competences internal and, at the same time, the centrifugal force for a constant and virtuous interaction between the two levels, consolidating a profitable cooperative model, although not immune to dysfunctions and distortions (...)"[31].

The principle of loyal cooperation in citizenship and the right of attribution concerns the loss of the citizenship[32] and the issuing

of creating a union always closer between the peoples of Europe and that the task of the Union, which is founded on the European Communities, integrated by the policies and forms of cooperation established by the said Treaty, consists in organizing relations between the Member States in a coherent and supportive way and among their peoples. It would be difficult for the Union to fulfill its mission effectively if the principle of sincere cooperation, which implies in particular that Member States take all general or particular measures capable of guaranteeing the execution of their obligations arising by European Union law, it did not impose itself also in the context of police and judicial cooperation in criminal matters, which is moreover entirely based on cooperation between Member States and institutions (…)".

31CJEU, joined cases C-643/15 to C-647/15, Slovak Republic and Hungary v. Council of 6 September 2017, op. cit.

32It is worth mentioning that already in 2014 the European Parliament adopted a resolution to invite Malta to align its citizenship program with the values of the Union (European Parliament resolution of 16 January 2014 on citizenship of the Union for

of temporary or permanent residence permits to citizens of third countries:

"(...) who make investments in the Member State concerned, without imposing any residence requirement (...)" (Carrera, 2014; Parker, 2016; Maas, 2016; Bauböck, Paskalev, 2016; Ossterom-Stapleds, 2018; Menezes Queiroz, 2018; Frivara, 2019).

The principle of loyal cooperation must ensure that citizenship is not granted with the absence of an effective connection with the country and its citizens[33]. Remaining on the subject, we note that the CJEU has attempted to point out in relation to the possible withdrawal of a Member State from the Union that it may have:

"(...) a considerable impact on the rights of all citizens of the Union (...) the right to free movement, both for citizens of the Member State concerned and for those of other Member States (...) accepting unilateral revocation as a more favorable solution to the protection of the acquired rights of citizens of the Union, than the withdrawal of a Member State inevitably will limit (...)"[34].

The Union is precisely that of being a new legal system that seeks to protect the lives of the peoples who are part of this great family through human rights, even reaching levels of limiting sovereign powers in limited sectors by recognizing its own citizens as subjects[35]. It seems logical, optimistic and important

sale, P7_TA (2014) 0038. European Commission, Joint Press Statement by the European Commission and the Maltese Authorities on Malta's Individual Investor Program (IIP), 24 January 2014, MEMO/14/70: "(…) the Commission initiated a dialogue with the Maltese government, also with a view to avoiding the opening of an infringement procedure for violation of the principle of loyal cooperation, after which Malta undertook to review its program, by binding the attribution of citizenship for investments to a minimum period of residence on the island of the applicant (…)".

33European Commission, Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions-Residence and citizenship programs for investors in the European Union, 23 January 2019, COM (2019) 12 final.

34CJEU, C-621/18 Wightman and others, of 10 December 2018, op. cit., par. 135.

35CJEU, C-621/18 Wightman and others, of 10 December 2018, op. cit., par. 144. C-26/62, Van Gend & Loos v. Amministrazione olandese delle imposte of 5 February

for supporters of the EU law that the withdrawal procedure takes their interests into account.

The CJEU in the Micheletti case[36], stated:

"(...) respect for community law (…) and the limit to state competence in matters of attribution and loss of citizenship (...)" (Kochenov, 2013)[37].

The Advocate General Miguel Poiares Maduro, in his conclusions on the Rottmann case, recalled:

"(...) the principle of loyal cooperation could be undermined if a Member State proceeded with an unjustified mass naturalization of citizens of third countries. The principle of loyal cooperation is then that of the competence to stipulate international agreements with third countries" (Blockmans, Wessel, 2012).

The CJEU stated that:

"(...) the matter governed by an agreement falls partly within the competence of the Union and partly within that of the Member States. The latter, in order to guarantee the unity of the international representation of the Union, must establish close cooperation with the European institutions, both in the negotiation and stipulation process and in the fulfillment of the commitments undertaken. In particular, it stated that the adoption of a decision authorizing the EC to negotiate a multilateral agreement on behalf of the Union marks the beginning of concerted action at the international level and implies, if not an obligation on states to abstain members, at least an obligation of close cooperation between the latter and the institutions, so as to facilitate the execution of the Union's tasks as well as guarantee the unity and coherence of the latter's international action and representation (...)"[38].

The CJEU's decision is oriented towards the more general character supported by the Advocate General of Tizzano:

1963, ECLI:EU:C:1963:1, I-00003, par. 32, which the CJEU in the famous paragraph: "(...) in which it qualifies the Community as a "new kind of legal order", while not expressly referring to the "Ever Closer Union", is based inter alia on the fact that the preamble of the Treatise "besides mentioning the governments, it refers to the peoples (...)".

36CJEU, C-369/90, Mario Vicente Micheletti and others v. Delegación del Gobierno in Cantabria of 7 July 1992, ECLI:EU:C:1992:295, I-04239.

37See the conclusions of the Advocate General Poiares Maduro presented in case: C-135/08, Janko Rottmann v. Freistaat Bayern of 30 September 2009, ECLI:EU:C:2009:588, I-01449, par. 30.

38CJEU, C-246/07, Commission v. Sweden of 20 April 2010, ECLI:EU:C:2010:203, I-03317.

"(...) a Member State would violate the principle of loyal cooperation in the event that it ratifies bilateral agreements which concern matters with respect to which the European Union is preparing to negotiate and conclude its own (Chamon, Govaere, 2020)[39]. Such an initiative lends itself to limiting, if not weakening, the common action that the institutions are preparing to undertake and in any case prevents them from presenting themselves as bearers of a common position of all the Member States, without at the same time guaranteeing that the agreement concluded by the state in question complies with the common interest and goes in the direction desired and decided by the community bodies (...)"[40].

The loyal cooperation has assumed a central role concerning the justice system in the Member States by stating that:

"(...) by virtue of this principle, the Member States have the obligation to guarantee the application and respect of the law in their respective territories of the Union and to ensure the execution of the obligations deriving from the Treaties or resulting from the acts of the institutions of the Union (…)" (Lock, 2010; O'Meara, 2011; Kuijer, 2011; Potteau, 2011; Ladenburger, 2011; Jacquè, 2011; Ashiagbor, Countouris, Lianos, 2012; Polakiewicz, 2013; Torres Perez, 2013; Janssens, 2013; Jacquè, 2014; De Witte, 2014; Meyer, 2014; Peers, 2015; Spaventa, 2015; Halbestram, 2015; Halleskov Storgaard, 2015; Krenn, 2015; Lambrecht, 2015; Petite, 2015; Wessel, Łazowski, 2015; Halleslov Storgaard, 2015; Korenica, 2015; Morano-Foadi, Vickers, 2015; Picod, 2015; Billing, 2016; Liakopoulos, 2018; Andenas, Contartese, 2019; Liakopoulos, 2022)[41].

39Conclusions of the Advocate General Tizzano presented in case C-433/03, Commission of the European Communities v. Federal Republic of Germany of 10 March 2005, ECLI:EU:C:2005:153, I-06985, par. 82.

40Conclusions of the Advocate General Tizzano presented in case C-433/03, Commission of the European Communities v. Federal Republic of Germany of 10 March 2005, op. cit., par. 83.

41Opinion 2/13, Accession of the European Union to the European Convention for the Protection of Human Rights and Fundamental Freedoms, ECJ, 18 December 2014, ECLI:EU:C:2014:2454, published in the electronic Reports of the cases, "(…) art. 53 does not oblige the states to guarantee a higher level of protection than that of the ECHR, on the other the same CFREU must guarantee the same level of protection of the ECHR so that there is no conflict between the two provisions. Moreover, the CJEU has evoked the specificity of the Union's control system on respect for fundamental rights, in particular the principle of mutual trust in the areas of civil and criminal judicial cooperation, visa, asylum and immigration, namely the area of freedom, security and justice that obliges each member state to presume respect for fundamental rights by the other Member States and the absence of their jurisdictional powers in the field of foreign and security policy (...)". See also in case: C-168/13 PPU, Jeremy F. of 30 May 2013, ECLI:EU:C:2013:358, published in the electronic

Member States have the task:

"(...) of designating the competent judges and establishing the procedural methods of appeals aimed at guaranteeing the protection of the rights due to individuals by virtue of the direct effectiveness of European Union law, provided that such methods are no less favorable than those concerning similar appeals of an internal nature (...)"[42].

The CJEU stated that:

"(...) in the event that the applicable internal procedural rules provide for the possibility that the national judge, under certain conditions, returns to a final decision, in order to make the situation compatible with national law. This possibility must also be exercised to restore conformity of the situation at issue in the main proceedings with Union law (…)" (Sowery, 2016)[43].

The judges of the Luxembourg have derived the principles of equivalence and effectiveness based on the procedural methods of the appeals intended to guarantee the protection of the rights under Union law favorable to appeals and similar ones of an

Reports of the cases, which is affirmed that: "(...) the absence of the necessary provisions of the Framework it frameworks, it must be that the framework for the implementation of the objectives of the framework to a European Arrest Warrant (...)". In the same spirit see also: CJEU, C-399/11, Stefano Melloni of 26 February 2013, ECLI:EU:C:2013:107; C-396/11, Ministerul Public-Parchetul de pe lângă Curtea de Apel Constanţa v. Radu of 29 January 2013, ECLI:EU:C:2013:39, both of them published in the electronic Reports of the cases. C-284/16, Achmea of 6 March 2018, ECLI:EU:C:2018:158, published in the electronic Reports of the cases, par. 34: "(…) "[t]he Union law is based (…) on the fundamental premise according to which each Member State shares with all the other Member States, and recognizes that they share with it, a series of common values on which the Union is founded, as specified in Article 2 TEU. This premise implies and justifies the existence of mutual trust between Member States regarding the recognition of these values and, therefore, respect for the Union law that implements them. It is precisely in this context that it is for the Member States, in particular, by virtue of the principle of sincere cooperation set out in the first subparagraph of Article 4(3) TEU, to ensure, in their respective territories, the application and respect of the Union law and adopt, to this end, any measure of a general or particular nature capable of ensuring the execution of the obligations deriving from the Treaties or consequent to the acts of the institutions of the Union (...)".

42CJEU, C-13/01, Safalero srl v. Prefetto di Genova of 11 September 2003, ECLI:EU:C:2003:447, I-08679, par. 49.

43CJEU, C-69/14, Dragoş Constantin Târşia v. Statul român e Serviciul Public Comunitar Regim Permise de Conducere si Inmatriculare a Autovehiculelor of 6 October 2015, ECLI:EU:C:2015:662, parr. 28-30.

internal nature; and must not be impossible for the exercise of the rights conferred by the legal order of the Union[44]. It is understood that the loyal cooperation has built the obligation to ensure the jurisdictional protection of individuals regarding legal situations attributable to the law of the Union, as well as the reference to procedural rules. In the infamous case of the crisis of law in Poland the judge went as far as:

"(...) tracing the principle of loyal cooperation not only to the two aspects just mentioned, but also to the composition of the national courts (...)" (Jakab, Kochenov, 2017; Halmai, 2018; Davies, Aubelj, 2018; Antal, 2019; Mader, 2019; Breuer, 2019; Liakopoulos, 2019; Kelemen, Pech, 2019; Oates, 2020; Neuwahl, Kovacs, 2020).

Already in the ruling on the Associação Sindical dos Juízes Portugueses case the CJEU stated:

"(...) that the organization of national judicial systems cannot in any case be extraneous to the review of the Court, thus opening the way to closer control of the Union judge on the behavior of member countries that may undermine the independence of internal courts (...)" (Varju, 2019)[45].

The Advocate general Henrik Saugmandsgaard Øe stated that: "(...) establishing effective means of appeal, deriving from the principle of loyal cooperation, would have an eminently procedural character and should not be confused with the principle of independence of judges (...)" (Pech, Platon, 2018; Platon, 2019; Kochenov, 2019; Pech, 2020)[46].

In the ruling of 2018 relating to Poland[47] and of 2019[48] which

44CJEU, C-234/17, XC and others of 24 October 2018, ECLI:EU:C:2018:853, published in the electronic Reprots of the cases, par. 22.

45CJEU, C-64/16 Associação Sindical dos Juízes Portugueses of 27 February 2018, ECLI:EU:C:2018:117, published in the electronic Reports of the cases, par. 30.

46Conclusions of the Advocate General Henrik Saugmandsgaard Øe presented in 18 May 2017, case C-64/16, Associação Sindical dos Juízes Portugueses v. Tribunal de Contas of 18 May 2017, and especially the parr. 62-68.

47Order of the President of the Court in case: C-619/18 Commission v. Polond of 15 November 2018, ECLI:EU:C:2018:910, published in the electronic Reports of the cases, par. 21.

48CJEU, C-192/18, Commission v. Poland (Indèpendence des juridictions de droit commun) of 5 November 2019, ECLI:EU:C:2019:924, published in the electronic Reports of the cases, parr. 98 and 106.

had as their object the independence of Polish judges, the CJEU held:

"(...) that the measure introduced by the Warsaw government on lowering the retirement age of magistrates aroused doubts regarding the protection of the rule of law, since it would have given the Minister of Justice the power to exclude certain groups of judges at his own discretion once they reach retirement age (...)".

Loyal cooperation seen as an institutional balance according to principles that are complementary but not necessarily coincident (Klamert, 2014)[49].

The legal basis of an act as well as the conduct of the decision-making procedure can be traced back to the principle of institutional balance. If an institution:

"(...) in the light of objective elements[50], believes that an act finds its legal basis in a specific provision of the treaty, it cannot attribute to it a different legal basis for the simple fact that the latter provides for a decision-making procedure deemed favorable (...)" (Van Der Mei, 2016; Juijper, 2017)[51].

If the decision-making procedure in question involves the involvement of multiple institutions, they must fully exercise their competence, under penalty of nullity of the act. The regular consultation of the European Parliament in the cases provided

49According to Klamert: "(…) the principle of institutional balance is a manifestation of institutional loyalty (…)".

50In this regard, the Court specified that: "(…) according to settled case-law, the choice of the legal basis of an act within the system of Community competences cannot depend on the mere conviction of an institution about the aim pursued, but must be based on objective, subject to judicial review. These elements include, in particular, the purpose and content of the act (...)". CJEU, C-70/88, European Parliament v. Council of the European Communities of 4 October 1991, ECLI:EU:C:1991:217, I-02041, par. 9.

51"(…) the choice of the appropriate legal basis for a Union act is of constitutional importance, since the use of an incorrect legal basis can invalidate this act, in particular, when the appropriate legal basis provides for an adoption procedure other than that which was actually followed (…)". CJEU, C-263/14, Parliament v. Council of 14 June 2016, ECLI:EU:C:2016:435, published in the electronic Reports of the cases, par. 42.

for by the Treaty, even where it can only express an opinion, constitutes a substantial formality, failure to comply with which implies the nullity of the act in question[52].

In the European Parliament case[53], the CJEU recognized:

"(...) a violation of the principle of loyal cooperation, with consequent nullity of the act, in the face of the Council's failure to comply with an interinstitutional agreement concluded with the EC (...)"[54].

The distinction between loyal cooperation and institutional balance can be called:

"(...) to be relative to the power of the European EC to withdraw a legislative initiative (...)" (Chamon, 2015; Kovar, 2015; Enger, 2018).

Within this context the CJEU has established that:

"(...) due to the principle of institutional balance, the EC can withdraw a proposal when the amendments presented by the European Parliament and the Council risk distorting it. However, pursuant to the principle of loyal cooperation, in such circumstances the EC, before withdrawing the proposal, must take into consideration the concerns of the European Parliament and the Council which were at the origin of the amending desire (...)"[55].

Art. 218 TFEU with the relevant jurisprudence has laid the foundations and distinctions between loyal cooperation and institutional balance especially in the conclusion of international agreements (Kellerbauer, Klamert, Tomkin, 2019; Berry, Homewood, Bogusz, 2019; Blanke, Mangiamelli, 2021)[56]. Art. 218 TFEU does not empower the Council to impose detailed

52CJEU, C-392/95, European Parliament v. Council of the European Union of 10 June 1997, ECLI:EU:C:1997:289, I-93213, par. 14.

53CJEU, C-65/93, European Parliament v. Council of the European Union of 30 March 1995, ECLI:EU:C:1995:91, I-00643, parr. 26-28.

54CJEU, C-25/94, Commission of the European Communities v. Council of the European Union of 19 March 1996, ECLI:EU:C:1996:114, I-01469.

55CJEU, C-409/13, Council v. Commission of 14 April 2015, ECLI:EU:C:2015:217, published in the electronic Repots of the cases.

56CJEU, C-425/13, Commission v. Council of 16 July 2015, ECLI:EU:C:2015:483, published in the electronic Reports of the cases.

negotiating positions on the Commission since it effectively deprives the latter of its negotiating competence. The CJEU specified:

"(…) the Council and the EC must respect the principle of loyal cooperation (…) has particular importance for the Union's action on the international level, since such action initiates a close process of concertation and consultation between the institutions of the Union (…)"[57].

The Council has designated, in accordance with Article 218, par. 4, TFEU, a special Committee. The EC must provide this special Committee with all the information necessary for the latter to monitor the progress of the negotiations, such as, in particular, the orientations announced and the positions defended by the other parties during the negotiations. Only in this way is the special committee able to formulate opinions and indications relating to the negotiation[58].

The obligation of loyal cooperation places the duty of sharing with the Council and must be duly informed on the evolution of the situation. As the Advocate General Melchior Wathelet also states:

"(...) institutional balance is nothing other than the expression of the classic principle (of respect) of the assigned competences and the principle of loyal cooperation can be considered as a tool that allows for the best adaptation of the jurisdictional review of respect for the institutional balance (...)"[59].

57CJEU, C-425/13, Commission v. Council of 16 July 2015, op. cit., par. 64.

58CJEU, C-425/13, Commission v. Council of 16 July 2015, op. cit., par. 66.

59Conclusions of the Advocate General Melchior Wathelet presented in case: C-425/13, European Commission v. Council of the European Union of 1March 2015, ECLI:EU:C:2015:174, published in the electronic Reports of the cases, par. 103.

Withdrawal of a Member State of the Union and principle of loyal cooperation

Already as far back as 1957 with the Treaties of Rome, member countries maintained the right to abandon the organization whenever they wanted based on federalist (Schütze, 2009)[60] and constitutionalist[61] ideologies and according to the supranational nature of the Union (Piris, 2006; Louis, 2006; Athanassiou, 2009; Hofmeister, 2010; Tatham, 2012; Nicolaides, 2013; Bosse-Platière, Rapoport, 2014; Grosclaude, 2015; Caddous, 2015; Łazowski, 2016; Hillion, 2016; Ćapeta, 2016; Craig, 2016; Closa, 2017; Nicolaides, Roy, 2017; Lord, 2017; Fabbrini, 2017; Eeckhout, Frantziou, 2017; Haguenau-Moizard, Mestre, 2017; Huysmans, 2019; Fitzmaurice, Merkouris, 2020).

A first discussion dates back to the constitutional treaty before the treaty of Lisbon regarding Art. 50 TEU when the representative of the Dutch government has already shown his opposition several times, stating that

"(…) facilitating the possibility to withdraw from the Union is contrary to the idea of European integration as set out in the preamble of the TEU, resolved to continue the process of creating an ever closer union among the peoples of

60CJEU, conclusions of the Advocate general Poiares Maduro in case: C-402/05 P and C-415/05 P, Kadi and Al Barakaat International Foundation v Council and Commission of 16 January 2008, ECLI:EU:C:2008:11, I-06351, par. 21. According to Schütze: "(…) [the EU's] formation was clearly international and its amendment still is. However, its international birth should not prejudge against the "federal" or "constitutional" status of the EC Treaty (…) the fact remains that the European legal order has adopted the "originality hypothesis" and cut the umbilical cord with the international legal order. The Treaty as such-not international law-is posited at the origin of European law (…)".

61CJEU, order in case: C-2/88, J.J. Zwartveld and others of 13 July 1990, ECLI:EU:C:1990:315, I-03365, par. 15.

Europe (…)" (Barber, Cahill, Ekins, 2019).

An amendment was proposed by the French representative as it provided:

"(…) pour insister sur le caractère tout à fait exceptionnel d'une telle éventualité (...) le retrait ne doit pouvoir être envisagé qu'à l'occasion d'un changement substantiel dans la composition de l'Union ou dans sa nature. Il doit s'agir d'une demande négociable, et non d'une décision purement unilatérale. Et cette décision grave doit porter effet sur une longue période (...)"[62].

Therefore, the withdrawing state would not have been able to submit a new membership application for twenty years. Among the representatives of the European People's Party who had underlined the need to foresee consequences for the decision to withdraw the state:

"(…) who has abused the right of withdrawal under the present article, may be expelled from the Union by a decision of the European Council. Such expulsion shall require a qualified majority in the European Council and the consent of the European Parliament (...)"[63].

The idea proposed was also important:

"(…) le cas où il n'y aurait pas d'accord entre l'Union et l'État qui se retire, notamment en ce qui concerne le soutien financier prévu et destiné aux États mais pas encore octroyé (...)"[64].

The solution followed during the Convention was clearly the result of a compromise. On the one hand the right of unilateral withdrawal is recognized (Poinsignon, 2018) and on the other hand this faculty is subordinated to a procedure for regulating the exit and in some way to safeguard and protect the correct

62Proposition d'amendement à l'Article I-59 Déposée par Monsieur de Villepin.

63Suggestion for amendment of Article I-59 by Brok, Szajer, Akcam, Van Der Linden, Lamassoure, Brejc, De- Metriou, Figel, Liepina, Santer, Kelam, Kroupa, Tajani, Almeida Garrett, Altmaier, Kauppi, Lennmarker, Maij-Weggen, Rack, Vilen, on behalf of the EPP Convention Group.

64Proposition d'amendement à l'Article 46 déposée par Maria Eduarda Azevedo et António Nazaré Pereira.

functioning of the Union.

In the withdrawal, the loyal cooperation did not prove an alteration of the nature of the Union since it recognized an already existing right which concerned its exercise. Perhaps,

"it constituted the definitive affirmation of the nature of the Union as an international organization" (Louis, 2006).

Therefore, with Brexit, membership of the Union and its relative withdrawal from it was in theory different from membership of any international organization (Birkinshaw, 2020).

Therefore, the position of the United Kingdom, remaining faithful to the supranational nature of the Union, stated that:

"(…) the possibility of unilateral withdrawal is theoretically problematic because it allegedly contradicts the integrationist rationale of the Treaties (…)" (Louis, 2006).

The United Kingdom, after years of participation in the process of evolution of the historical integration, legal policy of the EU law, has had many especially practical difficulties in returning as a third country. The notification of withdrawal led it to a condition of widespread political uncertainty which perhaps simultaneously "damaged" the image of the Union, especially in the sector of the effective functioning of the institutions and the policy of economic and monetary stability. The withdrawing state:

"(...) remaining a member of the Union until the conclusion of the procedure referred to in Art. 50 TEU, with its vote he could facilitate, or hinder, the adoption of decisions which, probably, will not bind him or, worse, it could be induced to instrumentally use its right to vote in order to obtain concessions in the negotiation of the withdrawal (…)" (Berry, Homewood, Bogusz, 2019; Blanke, Mangiamelli, 2021).

Brexit through the withdrawal procedure of the Union takes place in compliance with the principle of the loyal cooperation which in reality imposed similar mutual respect and assistance on Member States and European institutions.

On the other hand, the relative weakness was due to some elements that were not well clarified and were still in the stage of being perfected according to that envisaged by an institutional article that was not perfect and certainly did not take into consideration all the flaws of a perfect withdrawal, i.e. Art. 50 TEU (Sari, 2017) which did not offer the institutions all the tools suitable to respond to serious violations of the principle of loyal cooperation which in reality were carried out by the withdrawing state which risked compromising the integration steps and the good and correct functioning of the Union.

In the same spirit were the statements of Lenaerts and Gerard that:

"(...) Art. 50 TEU recognizes the Union as an autonomous entity entitled to negotiate on an equal footing with its Member States (...)" (Lenaerts, Gerard, 2004; Hillion, 2016).

If Art. 50 TEU is read together with Art. 17 TEU (Ponzano, 2011; Grigoriou, 2012; De Waele, Weyembergh, Grevi, 2019) makes us clarify the related negotiation which involves only one institution of the Union, namely the European Commission (Hillion, 2012). By carefully reading Art. 50 TEU we can understand that it does not include the relevant references that respect the identification of the negotiator (Haratsch, Koenig,

Pechstein, 2020)[65], given that the European Commission has generally provided and by virtue of Art. 17 TEU relating to the power of external representation and without prejudice to the exceptions provided for by the Treaties (Demedts, 2017; Cremona, Kilpatrick, 2018; Schütze, Tridimas, 2018; Eckes, 2019)[66] which are not present in the case of Art. 50 TEU (Hillion, 2012). The negotiation with the United Kingdom was mainly coordinated by the European Commission[67]. In particular, Art. 50 TEU affirms:

"(...) unity in the international representation of the Union (Marìn Durán, Morgera, 2012; Malmberg, 2012; Papadopoulos, 2015; Rosas, Armati, 2018; Melin, 2019)[68], avoiding the proliferation of parallel negotiations, which could complicate the conclusion of a withdrawal agreement (...) also responds to the third criterion for an "orderly" withdrawal, since it limits, although not absolutely, the duration of the negotiation (…). Withdrawal is automatic two years after notification of the intention to withdraw, unless a withdrawal agreement enters into force before this deadline. The negotiation period can only be extended with a unanimous decision of the European

65Art. 50 TEU limits itself to referring to Art. 218, paragraph 3, TFEU, which in turn states that the Council designates "according to the subject of the envisaged agreement" the negotiator of an international agreement.

66CJEU, C-660/13, Council v. Commission of 28 July 2016, ECLI:EU:C:2016:616, published in the electronic Reports of the cases, par. 38. Joined cases, C-626/15 and C659/16, Commission v. Council (AMP Antarctique) of 20 November 2018, ECLI:EU:C:2018:925, published in the electronic Reports of the cases, par. 64. Conclusions of the Advocate General Sharpston in case: C-660/13, Council v. Commission of 26 November 2015, ECLI:EU:C:2015:787, published in the electronic Reports of the cases, par. 105. Conclusions of the Advocate General Sharpston in case: C-73/14, Council v. Commission of 16 July 2015, ECLI:EU:C:2015:490, published in the electronic Reports of the cases, par. 104. Conclusions of the Advocate General Kokott in joined cases: C-616/15 and C-659/16, Commission v. Council of 31 May 2018, ECLI:EU:C:2018:362, not yet published, par. 55.

67See the Informal meeting of the Heads of State or Government of 27 Member States, as well as the Presidents of the European Council and the European Commission, 15 December 2016, par. 3.

68CJEU, C-246/07, Commission v. Sweden of 20 April 2010, ECLI:EU:C:2010:203, I-03317, par. 73.

Council, approved by the withdrawing state (...)" (Cremona, Kilpatrick, 2018).

The rationale of Article 50, par. 3 TEU has a ductile nature. On the one hand it allows unilateral withdrawal and is an indication of the sovereignty of the state requesting it and on the other hand it presents itself as a stimulator of rapid conclusion of a withdrawal agreement from a legal point of view. Of course, the time limit is missing but the withdrawing state will be able to prolong the negotiation for the relative withdrawal as long as the withdrawal conditions so desire. The time frame is an important factor but in the case of a withdrawal agreement the withdrawing state has its own interest in concluding an agreement and not maintaining negotiations eternally. The non-perfection of Art. 50 TEU did not hinder the CJEU from reconstructing a right to the unilateral revocation of the notification through a systematic interpretation of the different elements which includes the article itself and which find a common inspiration first of all in the principle of sovereignty (par. 4) (Hillion, 2016). Therefore the CJEU brought into discussion various topics of a subsidiary nature including aspects of international treaty law and in particular the Vienna Convention on the Law of Treaties (VCLT) up to the legal and political principles and objectives for the future of Union law.

The brexit affair

The activation of Art. 50 TEU was a body in the hands of the excess Member State to proceed and bind by the principle of loyal cooperation according to Art. 4, par. 3, TEU (Berry, Homewood, Bogusz, 2019; Blanke, Mangiamelli, 2021). An unjustified delay, in the relevant notification, could have the consequence for the European Commission to opening infringement proceedings, pursuant to Art. 258 TFEU, for the violation of the principle of loyal cooperation (Berry, Homewood, Bogusz, 2019; Blanke, Mangiamelli, 2021). The United Kingdom's continued inertia:

"(...) could have constituted a violation of the duty of loyal collaboration so serious as to justify the procedure referred to in Art. 7 TEU (…)" (Berry, Homewood, Bogusz, 2019; Blanke, Mangiamelli, 2021).

The legal requirements of such behavior and a possible delay of the United Kingdom have damaged the Union and risked compromising the democratic and efficient functioning of its institutions, as well as the relative European economic stability, especially after the Greek crisis and beyond (Bignami, 2019).

Within this context, the European Parliament has taken a position and tried to prevent negative uncertainties, by protecting the integrative spirit of the Union with the relevant notification according to Art. 50 TEU that was to take place and relatively marking the European Council of 28 and 29 June

2016[69]. The United Kingdom continued to:

"(…) design the legislation, actions, strategies or policies of the Union in such a way as to favor its interests as an outgoing Member State rather than the interests of the European Union (…)" (Dixon, 2018)[70].

The starting of trade negotiations with third countries constitutes a fact of an objective nature in relation to the possible call of the European Parliament, i.e. to conceive the legislation of the Union in such a way as to favor its own interests which would appear to be of an abstract and complicated nature to demonstrate. Of course, the initial debate of parliamentarians and representatives of a withdrawing state to participate in the decision-making process of the Union after the adopted acts would not produce the expected effects on them. Position that has already been noticed since the parliamentary elections of May 2019 according to Art. 50, par. 3 TEU of 21 March 2019[71]. The two-year term according to Art. 50, par. 2 TEU was expired during March of 2019 months before the elections of the European Parliament. The positions of the United Kingdom and the Union were not quite coincident. The United Kingdom

69European Parliament resolution of 28 June 2016 on the decision to withdraw from the EU following the referendum in the United Kingdom (2016/2800 (RSP)).

70European Parliament resolution of 5 April 2017 on negotiations with the United Kingdom following the notification of its intention to withdraw from the European Union (2017/2593 (RSP)).

71European Parliament resolution of 5 April 2017 on negotiations with the United Kingdom following the notification of its intention to withdraw from the European Union, P8_TA (2017) 0102.

already stated that:

"(…) despite this request to extend article 50, it is in the interest neither of the United Kingdom as a departing state, nor of the European Union as a whole, that the United Kingdom holds elections of the European Parliament (…)" (Jones, 2019)[72].

According to the European Council:

"(…) if the United Kingdom is still a Member State on 23-26 May 2019, and if it has not ratified the Withdrawal Agreement by 22 May 2019, it will be under an obligation to hold the elections to the European Parliament in accordance with Union law (…) and in the event that those elections do not take place in the United Kingdom, the extension should cease on 31 May 2019 (...)"[73].

The legal service of the European Parliament justified the obligation of the United Kingdom to organize the elections and referred to the principle of loyal cooperation and the principle of participatory democracy according to Art. 10 TEU (Temple Lang, 2008)[74]. The Legal Service of the European Parliament stated that:

"(…) a failure to hold such elections would entail a breach by the UK of its obligations under the Treaties. Indeed, these obligations do not only concern the relationship between a Member State and the Union, governed by the principle of sincere cooperation under Article 4(3) TEU, but also the relationship between a Member State and its citizens which, under the principle of representative democracy, have the right to participate in the democratic life of the Union according to Article 10 TEU (...)"[75].

Therefore, the legal service of the European Parliament, basing itself on an extensive interpretation of Articles 13 and 14 TEU

72Letter from Theresa May to Donald Tusk, 5 April 2019.

73European Council Decision (EU) 2019/584 adopted in agreement with the United Kingdom of 11 April 2019 extending the deadline provided for in Article 50, paragraph 3, TEU, in the OJ of 11 April 2019, L 101, pp. 1-3, par. 10.

74"(…) the legal basis of the obligation on all national courts and authorities to comply with all the other general principles (…)".

75European Parliament, Legal opinion, Composition of the European Parliament 2019-2024 and the withdrawal of the United Kingdom from the European Union, 7 September 2017, SJ-0266/17.

(Berry, Homewood, Bogusz, 2019; Blanke, Mangiamelli, 2021), tried to clarify that any negligence on the part of the United Kingdom did not affect the regular composition of the Assembly given that the omissive behavior of one Member State could hinder the proper functioning of the Union.

Within this context, the European Council, determining the distribution of parliamentary seats for the period 2019-2024, followed the scenario of the Union of 28 (Motsch, 2019; Amtenbrink, Herrmann, 2020)[76]. Thus, it regulated a composition of the Assembly which was to assign all the seats foreseen. The second extension decision in which the terms of the procedure were extended for all the seats foreseen following the second extension decision in which the terms of the withdrawal procedure were extended until 31 October 2019 which established the compromise for a regular functioning of the Union and its institutions if the elections of the European Parliament continued to function perfectly and especially after 31 May 2019[77]. According to the European Council:

"(...) an incomplete formation of the European Parliament could have resulted, among other things things, the nullity of the acts adopted by the institution for violation of substantial forms (...)" (Lorenz, 2013; Jones,

76European Council Decision (EU) 2018/937 of 28 June 2018 establishing the composition of the European Parliament ST/7/2018/REV/1, OJ L 165I, 2.7.2018, p. 10.

77On the "conditional" extension, the criticism expressed in the doctrine is shared, according to which this condition appears similar to the expulsion of a State for violation of European Union law, which, as is known, is an unforeseen consequence of the treaties.

Sufrin, 2016; Raitio, Paulus, 2017; Roberts, 2019; Peers, 2019)[78].

The principle of loyal cooperation is already in doctrine:

"(…) the UK to refrain from meddling with the EU's future affairs (even if) to construct a legal duty for a withdrawing Member State to abstain or not vote against the majority is hardly convincing (…)" (Lock, 2019).

According to the European Council:

"(...) it takes note of the United Kingdom's commitment to behave in a constructive and responsible manner (Azoulai, 2018)[79] throughout the extension period, as required by the duty of loyal cooperation, and expects the United Kingdom to comply with this Treaty commitment and obligation in a manner that reflects its status as a withdrawing Member State. To this end, the United Kingdom must facilitate the Union in fulfilling its tasks and refrain from any measure that risks jeopardizing the achievement of the Union's objectives, in particular when participating in the Union's decision-making process (…)" (Lock, 2019).

The European Council created an obligation of behavior towards the representatives of the United Kingdom that it was impossible to control or guide the choices of the representatives of a state during all decision-making processes. The affirmation of various different standards of application of the principle of the loyal cooperation, referring to all Member States and to the withdrawal phase, indicates that the withdrawing state continues to be a member "at all effects", pursuant to Art. 50 TUE (Berry, Homewood, Bogusz, 2019; Blanke, Mangiamelli, 2021).

78GC, T-219/99, British Airways plc v. Commission of 17 December 2003, ECLI:EU:T:2003:343, II-05917: "(…) ruled on an alleged incompetence of the Commission, due to the fact that its members had resigned. In the case in question, however, it would be an irregular composition, which would result in a nullity for violation of substantial forms (…)".

79"(…) ways of structuring EU law, separating it from what is seen as the highly political, mundane and fragmented legal practice. As a result, they have an impact on the representation of the defining features of the EU legal order and more broadly on the nature of the European Union (…) to make all actors realise that they are part of the same global system (…) "suggère clairement l'existence d'une communauté qui excède la collectivité des États qui composent l'Union (...)".

Another type of discussion in this regard is the case of the withdrawal of the Union and the respect of the principle of loyal cooperation which concerns the possibility of revoking the notification according to the senses of Art. 50 TEU (Blanke, Mangiamelli, 2021). Thus,

"(...) the withdrawal notification can be revoked increases the degree of uncertainty which, as mentioned, manifests itself with the initiation of the procedure referred to in Art. 50 TEU(…)" (Ostendorf, 2017; Berry, Homewood, Bogusz, 2019; Blanke, Mangiamelli, 2021).

The European Parliament of 2017 noted that:

"(…) the belief that a de-notification should have been subject to conditions established by the whole of the EU-27, so that it could not be used by Member States improperly or as a tool procedure to improve the conditions of accession to the Union (...)"[80].

In the same spirit the factsheet published in 2017 by the European Commission which stated:

"(…) it was the decision of the United Kingdom to trigger Article 50. But once triggered, it cannot be unilaterally reversed. Article 50 does not provide for the unilateral withdrawal of the notification (...)"[81].

Art. 50 TEU was then also reported by the Supreme Court of the United Kingdom in the Miller case underlining that:

80European Parliament resolution of 5 April 2017 on negotiations with the United Kingdom following its notification that it intends to withdraw from the European Union (2017/2593(RSP).

81European Commission fact sheet on the state of play of Article 50 negotiations with the United Kingdom, Brussels, 12 July 2017.

"(...) once the intention to withdraw was communicated, a phase would have begun which would inevitably lead to the exit from the Union (...)"[82].

Continuing with the Wightman ruling where the CJEU ruled in favor of the revocability of the withdrawal notification (Louis, 2006; Von Bogdandy, Bast, 2009; Kaddous, 2015; Eeckhout, Frantziou, 2017; Fabbrini, 2017; Marti, 2018; Popov, 2919; Cuyvers, 2019; Lenaerts, Bonichot, Kanninen, Naöme, Pohjankoski, 2019; Fitzmaurice, Merkouris, 2020)[83] without referring to the principle of loyal cooperation, despite the fact that the Advocate General had indicated the limit to the exercise of unilateral revocation[84]. In our opinion, the jurisprudential choice was certainly respected and also questionable given that the recognition of the right of revocation could open the way to relative abuses by the Member State concerned to the detriment of the Union and its own institutions. The introduction into the treaties of the right of unilateral revocation and the related notification with intention to withdraw from the Union was advanced due to the intention to withdraw from the Union. The

82The Supreme Court, R (on the application of Miller and another) (Respondents) v Secretary of State for Exiting the European Union (Appellant), Reference by the Attorney General for Northern Ireland - In the matter of an application by Agnew and others for Judicial Review; Reference by the Court of Appeal (Northern Ireland)-In the matter of an application by Raymond McCord for Judicial Review, 24 January 2017.

83CJEU, C-621/18 Wightman and others, of 10 December 2018, ECLI:EU:C:2018:999, not published, parr. 62-63.

84Conclusions of the Advocate General Manuel Campos Sánchez-Bordona presented in case C-621/18, Wightman of 4 December 2018, op. cit., par. 67.

aforementioned genesis of Article 50 TEU

"(...) also militates in favor of an interpretation of this provision in the sense that a Member State has the right to unilaterally revoke the notification of its intention to withdraw from the Union (...)"[85].

If we accept that respect for sincere cooperation and good faith is not a main condition for the exercise of the right of revocation we must also conclude that the withdrawing state can revoke its notification strategically without in order to resubmit it later (De Baere, 2011; Klamert, 2014; Dimopoulos, 2015; Miglio, 2018)[86].

The CJEU's silence on this point can be explained in political and less legal terms. The CJEU sought to avoid giving a precise ruling on the relationship between good faith and sincere cooperation, thus weakening the political message for the United Kingdom, and at the same time underlined that the final decision

85Conclusions of the Advocate General Manuel Campos Sánchez-Bordona presented in case C-621/18, Wightman of 4 December 2018, op. cit., par. 68.

86According to Klamert: "(…) in any case, the issue is not of particular relevance for the purposes of this discussion, since any unilateral revocation, even fair or in good faith, could result in a distortion of the procedure of art. 50 TEU (…)". CJEU, C-246/07, *European Commission v. Sweden* of 20 April 2010, ECLI:EU:C:2010:203, I-03317. According to Dimopoulos: "(...) the idea that the member states remain free to conclude international agreements outside the legal system of the Union in so far as they do not violate EU law would be in contradiction with the principle of institutional balance, as freedom of the Member States to act outside the legal system of the Union would defeat the legislative function constitutionally attributed to the European Parliament by Art. 14 TEU. However, this reconstruction seems, according to the writer, based on a questionable assumption. Although the treaties recognize the European Parliament as a general co-legislator, they outline a system of competences based on the principle of attribution: well, if in the matters of concurrent competence the Member States are free to act in isolation, the extent to which the Union has not exercised its competence, the same conclusion should apply to the action which they exercise collectively through the conclusion of international agreements. Moreover, as will be observed, the limits to the conclusion of agreements that can be inferred from the primacy and from the principle of loyalty cooperation allow to avoid a prejudice of the institutional equilibrium (...)".

to remain or leave the Union is a "sovereign" issue. The relative political silence also does not exclude the prohibition on abuse of Art. 50 TEU procedure in the conditions imposed on the withdrawing state given that this prohibition can be applied in a general way in Union law, and is thus part of the objectives of loyal cooperation or good faith. We suppose that this way of interpretation is a bit difficult and complex given that the CJEU always has the obligation to respond to the related preliminary questions it receives (Cloots, 2015; Jesse, 2016; Tovo, 2017; Tovo, 2018; Rasmussen, Sindbjerg Martinsen, 2019; Melin, 2019)[87].

The fact of the candidate European commissioner by the United Kingdom

The United Kingdom's failure to designate itself as European Commissioner was a unique case in the history of the Union which constitutes one of the most serious and blatant violations of the principle of loyal cooperation by a Member State. We note how the procedure of ex Art. 50 TEU with the appropriate balancing tools at the hands of the institutions could compromise the good functioning of the Union (Berry, Homewood, Bogusz, 2019; Blanke, Mangiamelli, 2021). The European Council reiterated the extension of the withdrawal

87CJEU, C-621/18 Wightman and others, of 10 December 2018, op. cit., par. 76. C-571/10, Kamberaj and others of 24 April 2012, ECLI:EU:C:2012:233, published in the electronic Reports of the cases, par. 40.

deadlines which should not have compromised the regular functioning of the Union and the United Kingdom which would continue:

"(...) to be a Member State until the new withdrawal date, with all rights and obligations under Article 50 TEU, including the obligation to propose a candidate for membership of the EC (...)"[88].

In the Boris Johnson era, the intention was communicated not to indicate a name to be included in the team that was to make up the future European Commission because the United Kingdom had to hold the political elections on 12 December and the government had to respect the internal rule which prevents nominations or proposals to various international institutions during the electoral period. The European Commission has opened an infringement procedure thus contesting the violation of the principle of loyal cooperation[89]. According to Art. 86 of the Withdrawal Agreement[90], the CJEU continues to be competent for the ruling of the relevant appeals filed even during the transition period despite the fact that from 31 January 2020 the United Kingdom was now a third country. Any conviction produces a concrete effect other than that of a mere verification of the violation committed.

88European Council (EU) 2019/1810 decision adopted in agreement with the United Kingdom of 29 October 2019 extending the deadline provided for in Article 50, paragraph 3, TEU, in the OJ of 30 October 2019, L 278 I, pp. 1-3.

89European Commission launches infringement proceedings against the UK following its failure to name a candidate for EU ECr, 14 November 2019, IP/19/6286.

90Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community, in the OJ of 31 January 2020, L 29, pp. 7-187.

The position of the European Parilament in our opinion was quite risky and allows us to also say that it is out of place regarding the possibility of a failed election of the British parliamentarians considering the irregular composition of an institution to have a non-compliant behavior of a Member State determining the nullity of the acts adopted by the said institution due to violation of substantial formalities. A possible negligence of the legal service of the European Parliament would not affect the regular composition of the institution concerned given that the omissive behavior of a Member State cannot hinder the correct functioning of the Union by contradicting the supranational nature of the Union. It cannot also be shared that the democratic system based on the rule of law such as the Union can thus function regularly despite the violation of its own constitutional structure. The possibility of considering how to regulate the partial composition of the European Commission does not seem to be deducible from any provision of the treaties. Already Art. 246 TFEU states only one case in which the Council can unanimously decide not to fill a vacancy when it deems it appropriate for the remainder of the mandate (Berry, Homewood, Bogusz, 2019; Blanke, Mangiamelli, 2021).

Concluding remarks

As we can understand so far, the legal system of the Union is an

expression of the supranational character which has a broad scope of the obligation of good faith of an internationalist nature (Kolb, 2017)[91]. The loyal cooperation does not require the simple fulfillment of an obligation but aims to guarantee the effective affirmation of a new legal order, i.e. of the European Union. The Union and the United Kingdom will be governed by international law recalling the principle of loyal cooperation and good faith, assisting each other in the fulfillment of the tasks deriving from their agreement and adopting any relevant measure of a general or particular nature, thus ensuring the fulfillment of their own obligations deriving from this agreement and from any type of measure that endangers the realization of its objectives (Berry, Homewood, Bogusz, 2019; Blanke, Mangiamelli, 2021). This article, however, does not prejudice the application of Union law and in particular the principle of loyal cooperation. The principle of loyal cooperation in the case of the withdrawal of the United Kingdom affirmed the starting assumption, i.e. the procedure of Art. 50 TEU constituting the maximum expression of the bond of loyal cooperation that consolidates the Member States and the institutions as well as the latter in their mutual relations (Berry,

91See also in argument: Third Report on the Law of the Treaties, by Sir Humphrey Waldock, Special Rapporteur, doc. A/CN.4/167 and Add.1-3, in Yearbook of the International Law Commission, vol. II, 1964, p. 7: "(…) implicit in the obligation to perform the treaty in good faith (...)". Report of the International Law Commission Covering the Work of Its Sixteenth Session, 11 May-24 July 1964, doc. A/5809, in Yearbook of the International Law Commission, vol. II, 1p. 177.

Homewood, Bogusz, 2019; Blanke, Mangiamelli, 2021). It is also true that the activation of the withdrawal led to a situation of strong instability that could not be addressed without compromises for the correct and good functioning of the Union only if both parties act rigorously in compliance with the principle of loyal cooperation.

A position that is also affirmed in jurisprudence through the Wightman case where the CJEU expressed itself in favor of the unilateral revocation of the withdrawal notification, opening the way to possible abuses by Member States. Art. 50 TEU does not offer European institutions the necessary tools for the protection of serious violations of the principle of loyal cooperation by the withdrawing state as noted in the case of the designation of the European Commissioner (Berry, Homewood, Bogusz, 2019; Blanke, Mangiamelli, 2021). The only means of reaction they had at their disposal was that of the infringement procedure which risked being ineffective in situations of this type except for the fact that it constitutes an assessment of a functional nature and possible requests for compensation for damages by individuals at the state affected. The approach of the European Council of May 2019 made the extension of the withdrawal deadlines conditional on the actual organization of the elections of the European Parliament. Such measures may constitute the adoption of behavior aimed at compromising the protection and

correct functioning of the Union by the withdrawing state.

According to the interpretative logic, among the main reasons relating to the importance of the principle of loyal cooperation after the occurrence of the withdrawal has to do first and foremost with the circumstance based on the provisions of the agreement which refer to the law of the Union and to its own notions of nature interpreted and applied, based on the general principles of the Union also including the principle of loyal cooperation. A second statement, position concerns the transition period which lasted until 31 December 2020[92], a period where the United Kingdom, with limited exceptions, applied the law of the Union, recognizing the same effects that they produce within the member countries. Then, according to art. 129 dedicated to the external action of the Union:

"(...) by virtue of the principle of sincere cooperation, during the transition period the United Kingdom will abstain from any action that risks damaging the interests of the Union, in particular in the field of international organisations, agencies, conferences or fora of which the United Kingdom is an independent part (…)" (Casolari, 2019).

We cannot say that the situation is the same regarding the case of a withdrawal called hard exit without a conclusion of a withdrawal agreement. In this case we are oriented towards Art. 70 of the Vienna Convention on the Law of the Treaties (Channg-Tung, Garcia, 2019; Hollis, 2020; Fitzmaurice, Merkouris, 2020) referring to the consequences created by this

92EUROPEAN COMMISSION, Press Statement by Vice-President Maroš Šefčovič following the Second Meeting of the EU-UK Joint Committee, 12 June 2020.

type of withdrawal by imposing respect to:

"(…) any right, obligation or legal situation of the parties created through the execution of the treaty prior to its termination (...)" (Gauci and others, 2017)

shows that relations with the Union and its Member States are based and inspired by the international principle of good faith. Nonetheless, according to the Advocate General, Art. 50 TEU:

"(...) would be inspired by Articles 65 and 68 VCLT[93] and would constitute "a lex specialis with respect to the conventional rules (Articles 54, 56 and from 64 to 68 VCLT) of international law on the subject (...)"[94].

However, it would be possible to fill the gaps in Article 50 TEU if we connect it with Art. 68 VCLT despite the fact that it does not clearly reflect a customary international norm.

Therefore, as we have understood, loyal cooperation is not only a principle but also a specific method that persecutes the actors who are relevant to preventing, or rather resolving potential conflicts that emerge between them. The royal cooperation implies a dialogue between the subjects of the legal system which elaborates the relevant solutions where through jurisprudence a process is followed where the supranational legal system is oriented towards an incorporation of supranational elements into the identity structure of its Member States, giving rise to a common base which is represented as a shared counter-limit that respects the interference of supranational law. This type of procedural method is based on

93CJEU, C-621/18 Wightman and others, of 10 December 2018, op. cit., par. 85.

94Note, however, that in point 85 the Advocate General states: "(...) in my opinion more correctly, that art. 50 TEU constitutes lex specialis with respect to the general rules of international law on withdrawal from treaties (...)".

the implementation of the clause on national identities and the standard of protection of human rights. The loyal cooperation develops within the Union, i.e. through a framework that presupposes the protection of its own structural elements which are incorporated with those of the nations and Europe. A revision of primary law carried out by Member States without taking into consideration the relevant essential core of elements of the EU system results in the exit from an entity and the related suspension of the rule of law that distinguishes it.

The obligation of dialogue between CJEU and the national constitutional courts follows a path of constant evolution and dialogue. The non-affirmation, or rather the non-application of loyal cooperation determines a bilateralization of the relationships between the individual country and the organization, thus decreasing the dimension of mutual membership that is necessary between the member countries and the objectives of the common interests which in the end become completely ignored. Perhaps by not following the path of exit as an in extremis solution, perhaps the conflict will be so insoluble and of a systemic nature, making the role of the CJEU much more complicated and tiring and so the method, principle of loyal cooperation as a demonstration of a particular consideration for the concerns expressed. The CJEU must take a position and as the Advocate General recalled from the past

"(...) that the Court places itself within a certain hypothesis regarding the

ultimate fate of its response (...)"[95].

As we have understood, the principle, method of loyal cooperation has a bidirectional relationship that requires a systematic interpretation taking into account the principle of attribution and protection of the competences of the Member States. The emerging obligations are identified obligations of loyalty which are part of the clause of a preceptive nature, we can say that it is addressed both to the Institutions and to the Union. The right to abstain from the Member States, rectius the withdrawal and as can also be seen from the jurisprudence reveal the measure strictly necessary for the outcome of the evaluation inspired by the principle of proportionality. The new generation of European Union law with the help of the CJEU will play an evolutionary role in the interpretation of law and European integration.

The strategy and the withdrawal of the United Kingdom has a strategy, i.e. a reasonable basis not only legally but also in terms of political communication as we also understood from the Wightman case which is quite convincing from a legal point of view. Certain that the freedom of the Member States, the CJEU has emphasized the duties to this freedom follows and marks the duty, power obligation of loyalty towards the Union. In a "sovereign" manner, the United Kingdom has decided to

95CJEU, conclusions of the Advocate General Cruz Villalòn in case: C-62/14, Gauweiler and others of 14 January 2015, ECLI:EU:C:2015:7, published in the electronic Reports of the cases, parr. 65-66.

activate the withdrawal procedure, also accepting its own consequences and responsibilities, given that the withdrawal itself through the principle and method of loyal cooperation ends in a

"un Etat ne peut pas avoir un pied dedans, un pied dehors (…)" (Louis, 2006).

References

Abdereane, K. (2018). L'ancrage de l'engagement des États membres dans l'ordre constitutionnel de l'Union: les principes de loyauté et de solidarité. In L. Potvin-Solis (dir.). *Le statut d'État membre de l'Union européenne.* ed. Lacier, Bruxelles, 205ss.

Amtenbrink, F., Herrmann, C. (2020). *European Union law of economic and monetary Union.* Oxford University Press, Oxford, par. 17-9.

Andenas, M., Contartese, C. (2019). EU autonomy and investor-State dispute settlement under inter se agreements between EU Member States: Achmea. *Common Market Law Review, 56 (1),* 159ss.

Antal, A. (2019). T*he vise of hungarian populism: State autocracy and the Orbàn regime.* Emerland Group Publishing, London.

Ashiagbor, D., Countouris, N., Lianos, I. (2012). *The European Union after the Treaty of Lisbon.* Cambridge University Press, Cambridge. 109-135.

Athanassiou, P. (2009). Withdrawal and expulsion from the EU and EMU, some reflections. *Legal Working Paper Series No 10, ECB.*

Azoulai, L. (2018). Structural principles in EU law: Internal and external. In M. Cremona, (ed). *Structural principles in EU*

external relations law. Hart Publishing, Oxford/Portland, Oregon, 36.

Bachmaier, L. (2015). Mutual recognition instruments and the role of the CJEU: The grounds for non-execution. *New Journal of European Criminal Law, 5 (4),* 505ss.

Barav, A. (2017). *Judicial enforcement and implementation of European Union law.* ed. Bruylant, Bruxelles.

Barber, N.W., Cahill, M., Ekins, R. (2019). *The rise and fall of the European constitution.* Bloomsbury Publishing, New York

Barnard, C., Peers, S. (2017). *European Union law.* Oxford University Press, Oxford, 586ss.

Bauböck, R., Paskalev, V. (2016). Cutting genuine links: A normative analysis of citizenship deprivation. *Georgetown Immigration Law Journal, 30,* 56ss.

Berry, E., Homewood, M.J., Bogusz, B. (2019). *Complete EU law: Text, cases and materials.* Oxford University Press, Oxford

Bignami, F. (ed.) (2019). *EU law in populist times. Crises and prospects.* Cambridge University Press, Cambridge, 2019.

Billing, F.M.W. (2016). *The right to silence in transnational criminal proceedings. Comparative law perspectives.* ed. Springer, Berlin, 323ss.

Birkinshaw, P.J. (2020). *European public law. The achievement and the Brexit challenge.* Kluwer Law International, New York.

Blanke, H.J., Mangiamelli, S. (2021). *Treaty on the Functioning of the European Union. A commentary.* ed. Springer, Berlin.

Blanquet, M. (1994). *L'article 5 du Traité C.E.E., Recherche sur les obligations de fidélité des états membres de la Communauté.* LGDJ, Paris.

Blockmans, S., Wesse, R.A. (2012). Principles and practices of European external representation. *CLEER working paper.*

Bosse-Platière, I., Rapoport, C. (2014). *L'Etat tier en droit de l'union europèenne.* ed. Bruylant, Bruxelles.

Bouveresse, A., Ritleng, D. (dir.). (2018). *L'effectivité du droit de l'Union européenne.* ed. Larcier, Bruxelles.

Bovend'eerdt, K. (2016). The joined cases Aranyosi and Căldăraru: A new limit to the mutual trust presumption in the Area of Freedom, Security and Justice?. *Utrecht Journal of International and European Law, 32,* 112ss.

Breuer, M. (2019). *Principled resistance to ECtHR judgments. A new paradigm?.* ed. Springer, Berlin, 310ss.

Broberg, M.P., Fenger, N. (2016). Preliminary references to the Court of Justice of the European Union and the right to a fair trial under article 6 ECHR. *European Law Review, 23 (4),* 602ss.

Caddous, C. (2015). *The EU in international organisations and global governance: Recent developments.* Bloomsbury Publishing, New York.

Ćapeta, T. (2016). Brexit and the constitutional order: A three act tragedy. *Croatian Yearbook of European Law and Policy,* 12, 8ss.

Cardonnel, P., Rosas, S., Wahl, S. (2012). *Constitutionalising the European Union judicial system. Essays in honour of Pernilla Lindh.* Bloomsbury Publishing, New York.

Carrera, S. (2014). The price of citizenship: The maltese citizenship-for-sale affair and the principle of sincere cooperation in nationality matter. *Maastricht Journal of European and Comparative Law, 21 (3),* 406-427.

Casolari, F. (2012). The principle of loyal co-operation: A "master key" for EU external representation?. In S. Blockmans, R.A. Wessel (eds.), Principles and practices of EU external representation. *Cleer working papers,* 11-36.

Casolari, F. (2014). EU loyalty after Lisbon: An expectation gap to be filled?. In L.S. Rossi, F. Casolari (eds.). *The EU after Lisbon. Amending or coping with the existing treaties?.* ed. Springer, Basel, pp. 931-933.

Casolari, F. (2019). EU loyalty and the protection of Member States' national interests. In M. Varju (ed.). *Between compliance and particularism. Member State interests and European Union law.* ed. Springer, Cham, 49, 73.

Chalmers, D., Davies, G., Monti, G. (2019). *European Union law.* Cambridge University Press, Cambridge.

Chamon, M. (2015). Upholding the "community method": Limits to the Commission's power to withdraw legislative proposals. *European Law Review, 40 (6),* 895-909.

Chamon, M., Govaere, I. (2020). *European Union external relations post-Lisbon. The law and practice of facultative mixity.* ed. Brill, Boston/Leiden.

Channg-Tung, L., Garcia, T. (2019). *La Convention de Vienne sur le droit des traitès. Bilan et perspectives 50 ans après son adoption.* Pedone, Paris.

Cloots, E. (2015). *National identity in EU law.* Oxford University Press, Oxford, 303ss.

Closa, C., (ed.) (2017). *Secession from a Member State and withdrawal from the European Union.* Cambridge University Press, Cambridge.

Constantinesco, V. (1987). L'article 5 CEE, de la bonne foi à la loyauté communautaire. In F. Capotorti, C.D. Ehlermann, J. Frowein, F. Jacobs, R. Joliet, T. Koopmans, R. Kovar (Hrsg.). *Du Droit international. Au droit de l'intégration. Liber Amicorum Pierre Pescatore.* Nomos Verlag, Baden-Baden, 97ss.

Craig, P. (2016). Brexit: A drama in six acts. *European Law Review, 41 (4),* 450ss.

Craig, P., De Bùrca, G. (2021). *The evolution of EU law*. Oxford University Press, Oxford.

Cremona, M. (2018). *Structural principles in European Union external relations law.* Bloomsbury Publishing, New York, 94ss.

Cremona, M., Kilpatrick, C. (2018). *European Union legal acts. Challenges and transformation.* Oxford University Press, Oxford.

Cuyvers, A. (2019). Wightman, Brexit, and the sovereign right to remain. *Common Market Law Review, 56 (5),* 1303-1331.

Da Silva Passos, R. (2019). The interaction between public international law and EU law: The role played by the Court of Justice. In I. Govaere, S. Garben (eds.). *The interface between EU and international law. Contemporary reflections.* Hart Publishing. Oxford/London/New York/New Delhi/Sydney, 298ss.

Davies, G., Aubelj, M. (2018). *Research handbook on legal pluralism and European Union law.* Edward Elgar Publishers, Cheltenham, 400ss.

De Baere, G. (2011). O, where is faith? O where is loyalty? Some thoughts and the Union's external co-operation competences in the light of the PFOs case. *European Law Review, 36,* 406ss.

De Baere, G., Roes, T. (2015). EU loyalty as good faith. *International & Comparative Law Quarterly, 64 (4),* 829, 848.

De Waele, J.M., Weyembergh, A., Grevi, G. (2019). *Rethinking the European Union and its global rule from the 20th to the 21st*

century. Liber amicorum Mario Telò. Editions de l'Universitè de Bruxelles, Bruxelles.

De Witte, B. (2014). Article 53, in S. Peers et al. (eds.), *The EU Charter of Fundamental Rights, A Commentary.* Hart Publishing, Oxford & Oregon, Portland, 1523-1538.

De Witte, B., Tsourdi, E. (2018). Confrontation on relocation: The Court of Justice endorses the emergency scheme for compulsory relocation of asylum seekers within the European Union: Slovak Republic and Hungary v. Council. *Common Market Law Review, 55 (5),* 1457-1494.

Decheva, M. (2018). *Recht der europäischen Union.* ed. Nomos, Baden-Baden.

Delgado Casteleiro, A., Larik, J. (2011). The duty to remain silent: Limitless loyalty in EU external relations?. *European Law Review, 36 (4),* 524-541.

Demedts, U. (2017). *The future of international competition law enforcement. An assessment of the EU's cooperation efforts.* ed. Brill, Boston/The Hague, 276ss.

Dimopoulos, A. (2015). Taming the conclusion of inter sae agreements, between EU Member States: The role of the duty of loyalty. *Yearbook of European Law, 34,* 287ss.

Dixon, D. (2018). Article 50 and member State sovereignty. *German Law Journal, 19 (4),* 918ss.

Eckes, C. (2019). *European Union powers under external*

pressure: How the EU's external actions alter its internal structures. Oxford University Press, Oxford.

Eeckhout, P., Frantziou, E. (2017). Brexit and Article 50 TEU: A constitutionalist reading. *Common Market Law Review, 54,* 695ss.

Elliott, M. (2017). The Supreme Court's judgment in Miller: In search of constitutional principle. *Cambridge Law Journal, 76 (2),* 257-288.

Emmert, F., Petrovi, S. (2014). The past, present and future of EU enlargement. *Fordham International Law Journal, 47 (5),* 1362ss.

Enger, A. (2018). *The choice of legal basis for acts of the European Union. Competence overlaps, institutional preferences and legal basis litigation.* ed. Springer, Berlin.

Erlbacher, F. (2017). Recent case law on the external competences of the European Union: How member states can embrace their own treaty. *EPIN Paper,* 43.

Fabbrini, F. (2017). *The law and politics of Brexit.* Oxford University Press, Oxford.

Fitzmaurice, M., Merkouris, P. (2020). *Treaties in motion. The evolution of treaties from formation to termination.* Cambridge University Press, Cambridge, 282ss.

Folsom, T.H. (2017). *Principles of European Union law, including Brexit.* West Academic, Minnesota, 278ss.

Foster, N. (2017). *Foster on EU law*. Oxford University Press, Oxford.

Frivara, A. (2019). Citizenship-for-sale schemes in Bulgaria, Cyprus and Malta. *Migration Letters, 16 (2),* 246ss.

Garcìa Ureta, A.M. (2017). El European Parliament británico y las prerrogativas del gobierno ante el Brexit: Comentario a R (on the application of Miller) v. Secretary of State for Exiting European Union, sentencia del Tribunal Supremo del Reino Unido de 24 de enero de 2017. *Revista Española de Derecho Administrativo,* 182, 223-246.

Gàspàr-Szilàgy, S. (2016). Joined cases Aranyosi and Căldăraru. Converging human rights standards, mutual trust and new grounds for postponing a European arrest warrant. *European Journal of Crime, Criminal Law and Criminal Justice, 24 (1),* 198ss.

Gauci, J.P. and others (2017). Brexit financial disputes and public international law. *European Law Review, 2017,* 42, 622ss.

Geiger, R., Khan, D.E., Kotzur, M. (2016). *EUV/AEUV*. C.H. Beck, München.

Grigoriou, P. (2012). L'Europe à la croisèe des chemins: Regards depuis la Grèce. *Revue Quebècoise de Droit International, 25,* 164ss.

Grosclaude, L. (2015). La clause de retrait du Traité établissant

une Constitution pour l'Europe. *Revue Trimestrielle de Droit Européen, 41 (2),* 543ss.

Guiresse, M. (2016, avril, 16). Confiance mutuelle et mandat d'arrêt européen: Evolution ou inflexion de la Cour de justice?. *GDR-ELSJ.*

Haguenau-Moizard, C., Mestre, C. (2017). *La dèmocratie dans l'Union europèenne.* ed. Bruylant, Bruxelles.

Halbestram, D. (2015). It's autonomy stupid. A modest defense of Opinion 2/13 on EU accession to the ECHR, and a way forward. *Michigan Law Paper, 105.*

Halleslov Storgaard, L. (2015). European Union law autonomy versus European fundamental rights protection. On opinion 2/13 on EU accession to the ECHR. *Human Rights Law Review, 15 (3),* 487ss.

Halmai, G. (2018). Abuse of constitutional identity: The Hungarian Constitutional Court on interpretation of article E) (2) of the fundamental law. *Review of Central & East European Law, 43 (1),* 24ss.

Haratsch, A., Koenig, C., Pechstein, M. (2020). *Europarecht.* Mohr Siebeck, Tübingen.

Hatje, A., Terhechte, J.P., Müller-Graff, P.C. (2018). *Europarechtswissenschaft.* ed. Nomos, Baden-Baden.

Hillion, C. (2012). Cohèrence et action extèrieure de l'Union europèenne. *EUI working paper,* 2012/14.

Hillion, C. (2016). Leaving the EU, the Union way. A legal analysis of article 50 TEU. *European Policy Analysis, n. 8,* 6ss.

Hofmeister, H. (2010). "Should I stay or should I go?"-A Critical analysis of the right to withdraw from the EU. *European Law Journal, 16,* 589ss.

Hollis, D.B. (2020). *The oxford guide to treaties.* Oxford University Press, Oxford.

Huysmans, M. (2019). Enlargement and exit: The origins of article 50. *European Union Politics, 20 (2),* 160ss.

Jacquè, J.P. (2011). The accession of the European Union to the European Convention on Human Rights and Fundamental Freedoms. *Common Market Law Review, 48 (4),* 995, 1005.

Jacquè, J.P. (2014). CJUE-CEDH: 2-0. *Revue Trimestrielle de Droit Européen, 40 (4),* 823ss.

Jacquè, J.P. (2014). La Cour de Justice de!"Union et!"application de la Charte dans les Etats membres: "Mehr Licht". *European Yearbook on Human Rights, 14,* 125-147.

Jakab, A., Kochenov, D. (2017). *The enforcement of EU law and values: Ensuring member states' compliance.* Oxford University Press, Oxford.

Janssens, C. (2013). *The principle of mutual recognition in European Union law.* Oxford University Press, Oxford, 208ss.

Jesse, M. (2016). *The civic citizens of Europe: The legal potential for immigrant integration in the EU, Belgium,*

Germany and the United Kingdom. ed. Brill, Boston/The Hague, 295ss.

Jones, A., Sufrin, B. (2016). *European Union competition law: Text, cases and materials.* Oxford University Press, Oxford, 454ss.

Jones, E. (2019). The negotiations: Hampered by the UK's weak strategy. *European Journal of Legal Studies, 11,* 26ss.

Juijper, P.J. (2017). The court and he new European Union foreign relations law: Institutional balance?. In J. Czuczai, F. Naert. *The European Union as a global actor. Bridging legal theory and practice. Liber amicorum in honour of Ricardo Gosalbo Bono.* ed. Brill, Boston/Leiden, 52ss.

Kaczorowska-Ireland, A. (2016). *European Union Law.* ed. Routledge, London & New York.

Kaddous, C. (2015). *The EU in international organisations and global governance: Recent development.* Bloomsbury Publishing, New York.

Kelemen, D., Pech., L. (2019). The uses and abuses of constitutional pluralism: Undermining the rule of law in the name of constitutional identity in Hungary and Poland. *Cambridge Yearbook of European Legal Studies, 21,* 62ss.

Kellerbauer, M., Klamert, M., Tomkin, J. (2019). *Commentary on the European Union treaties and the Charter of fundamental rights.* Oxford University Press, Oxford.

Klamert, M. (2014). *The principle of loyalty in EU law.* Oxford University Press, Oxford, 5ss.

Klamert, M. (2019). Art. 4 TEU, in M. Kellerbauer, M. Klamert, J. Tomkin (eds). *The EU treaties and the Charter of Fundamental Rights.* Oxford University Press, Oxford, 51-52.

Kochenov, D. (2013). The essence of European Union citizenship emerging from the last ten years of academic debate: Beyond the cherry blossoms and the moon?. *International & Comparative Law Quarterly, 62 (1),* 102ss.

Kochenov, D. (2019). Elephants in the room. The European Commission's 2019 communication on the rule of law. *Hague Journal on the Rule of Law, 11,* 428ss.

Kolb, R. (2017). *Good faith in international law.* Hart Publishing, Oxford/Portland, Oregon.

Korenica, F. (2015). *The EU accession to the ECHR: Between Luxembourg's search for autonomy and Strasbourg's credibility on human rights protection.* ed. Springer, Berlin, 282ss.

Kovar, R. (2015). La Commission est en droit de retirer une proposition législative qu'elle ne reconnaît plus comme sienne. *Cahiers de Droit Européen, 27,* 349-364.

Krans, B., Nylund, A. (eds.). (2020). *Procedural autonomy across Europe.* Cambridge University Press, Cambridge.

Krenn, C. (2015). Autonomy and effectiveness as common concerns: A path to ECHR accession after Opinion 2/13.

German Law Journal, 16 (1), 147ss.

Kuijer, M. (2011). The accession of the European Union to the ECHR: A gift for ECHR's 60th anniversary or an unwelcome intruder at the party?. *Amsterdam Law Forum, 4 (3),* 17-32.

Kuijper, P.J., Amtenbrink, F., Curtin, D., De Witte, B., Mcdonnell, A. (2018). *The law of the European Union and the European Communities.* Kluwer Law International, New York, 1171ss.

Ladenburger, C. (2011). Vers l'adhésion de l'Union européenne à la Convention européenne des droits de l'homme. *Revue Trimestrielle de Droit Européen, 47 (1),* 20-26.

Lambrecht, S. (2015). The sting is in the Tail: CJEU Opinion 2/13 objects to draft agreement on accession of the EU to the European Convention on Human Rights. *European Human Rights Law Review, 15 (1),* 185ss.

Łazowski, A. (2016). Multilateral withdrawal from the EU: Realistic scenario or a folly?. *Journal of European Public Policy, 23 (9),* 1296ss.

Lenaerts, K., Bonichot, J.C., Kanninen, H., Naôme, C., Pohjankoski, P., (eds.). (2019). *An ever-changing Union?, Perspectives on the future of EU law in Honour of Allan Rosas.* Oxford University Press, Oxford, 339, 344ss.

Lenaerts, K., Gerard, D. (2004). The structure of the Union according to the Constitution for Europe: The emperor is getting

dressed. *European Law Review, (29),* 306ss.

Lenaerts, K., Maselis, I., Gutman, K. (2014). *EU procedural law.* Oxford University Press.

Liakopoulos, D. (2018). The influence of EU law on national civil procedural law: Towards the adoption of common minimum standards?-La influencia de la legislaciòn de la UE en el derecho procesal civil nacional: ¿hacia la adopciòn de normas minimas comunes?. *Revista General de Derecho Europeo, n. 46.*

Liakopoulos, D. (2019). Respect of rule of law between "internal affairs" and the European Union. The case of Poland and Hungary as a political v. functional raison d'être. *Acta Universitatis Danubius. Relationes Internationales, 12 (2)*

Liakopoulos, D. (2022). Polexit v. European Union. *UNIO European Union Law, 8 (1),* 14-31.

Lock, T. (2010). The ECJ and the ECtHR: The Future Relationship between the Two European Courts. The Law and *Practice of International Courts and Tribunals, 8,* 375-398.

Lock, T. (2015). The future of EU accession to the ECHR after Opinion 2/13: Is it still possible and is it still desirable?. *Edinburgh School of Law Research Paper Series.*

Lord, C. (2017). The legitimacy of exits form the EU. *Journal of European Integration, 39 (5),* 502ss.

Lorenz, M. (2013). *An introduction to European Union*

competition law. Cambridge University Press, Cambridge.

Louis, J.V. (2006). Le droit de retrait de l'Union européenne. *Cahiers de Droit Européen, 42 (3-4),* 308ss.

Maas, W. (2016). European governance of citizenship and nationality. *Journal of Contemporary European Research, 12 (1),* 537ss.

Mader, O. (2019). Enforcement of European Union values as a political endeavour: Constitutional pluralism and value homogeneity intimes of persistent challenges to the rule of law. *Hague Journal on the Rule of Law, 11,* 135ss.

Malmberg, J. (2012). Trade Union liability for "EU-unlawful" collective action. *European Labour Law Journal, 3 (1),* 8ss.

Mangas Martìn, A. (2018). *Tratado de la Uniòn Europea, Tratado de Funcionamiento.* ed. Marcial Pons, Madrid

Mansell, D. (2011). The European arrest warrant: The role of Judges when human rights are at risk. *New Journal of European Criminal Law, 2 (1),* 133ss.

Marìn Duràn, G., Morgera, E. (2012). *Environmental integration in the EU's external relations: Beyond multilateral dimensions.* Bloomsbury Publishing, New York, 19ss.

Marti, G. (2018). L'arrêt Wightman du 10 décembre 2018: La réversibilité du retrait au service de l'irréversibilité de l'intégration?. *Revue des Affaires Européennes,* 729-737.

Martucci, F. (2019). *Droit de l'Union europèenne.* LGDG, Paris

Melin, P. (2019). *The external dimension of European Union social security coordination. Towards a common EU approach.* ed. Brill, Boston/The Hague, 130ss.

Melin, P. (2019). The global compact for migration: Lessons for the unity of EU representation. *European Journal of Migration and Law, 21 (2).*

Menezes Queiroz, B. (2018). *Illegaly staying in the European Union: An analysis of illegality in European Union migration law*. Bloomsbury Publishing, New York, 162ss.

Meyer, J., (ed.). (2014). *Charta der Grundrechte der Europäischen Union.* ed. Nomos, Baden-Baden, 813-826.

Middleditch, H. (2017). The Miller decision: Continuing uncertainty over brexit. *New York University Journal of International Law and Politics, 49,* 971-987.

Miglio, A. (2018). Differentiated integration and the principle of loyalty. *European Constitutional Law Review, 14 (3),* 478ss.

Morano-Foadi, S., Vickers, L. (2015). (eds). *Fundamental Rights in the EU-A matter for two Courts.* Oxford University Press, Oxford.

Motsch, P. (2019). Élections europèennes, la victoire des progressistes ou des nationalistes a-t-elle en lieu?. *Civitas Europa, 42 (1),* 242ss.

Neframi, E. (2010). The duty of loyalty: Rethinking its scope through its application in the field of EU external relations.

Common Market Law Review, 47, 324ss.

Neframi, E. (2015). Principe de coopération loyale et principe d'attribution dans le cadre de la mise en œuvre du droit de l'Union. *Cahiers de Droit Européen, 27,* 223ss.

Neuwahl, N., Kovacs, C. (2020). Hungary and the EU's rule of law protection. *Journal of European Integration, 42.*

Niblock, R. (2016). Mutual recognition, mutual trust?: Detention conditions and deferring an EAW. *New Journal of European Criminal Law, 24 (2)* 250ss.

Nicola, F., Davies, B. (2017). *European Union law stories.* Cambridge University Press, Cambridge.

Nicolaides, P. (2013). Withdrawal from the European Union: A typology of effects. *Maastricht Journal of European and Comparative Law, 20 (2),* 209ss.

Nicolaides, P.A., Roy, R. (2017). Brexit and trade: Between facts and irrelevance. *Interconomics, 52,* 104ss.

O'Meara, N. (2011). A more secure Europe of rights? The European Court of Human Rights, the Court of Justice of the European Union and EU Accession to the ECHR. *German Law Journal, 12,* 1813-1832.

Oates, J.G. (2020). *Constituent power and the legitimacy of international organizations. The constitution of supranationalism.* ed. Routledge, London & New York.

Oppermann, T., Classen, C.D., Nettesheim, M. (2016). *Europarecht*. C.H. Beck, München.

Ossterom-Stapleds, H. (2018). The triangular relationship between nationality, European Union citizenship and migration in European Union law: A tale of competiting competences. *Netherlands International Law Review, 65,* 436ss.

Östlund, A. (2019). *Effectiveness versus procedural protection. Tensions triggered by the European Union law mandate of ex officio review*. Nomos Verlag, Baden, Baden, 58ss.

Papadopoulos, T. (2015). *European Union law and the harmonization of takeovers in the internal market.* Kluwer Law International, New York, 175ss.

Parker, O. (2016). Commercializing citizenship in crisis EU: The case of immigrant investor programmes. *Journal of Common Market Studies, 55 (2),* 332-348.

Pech, L. (2020). The rule of law in the European Union. The evolution of the treaty framework and rule of law toolbox. *Reconnect working paper, n. 7*, 9ss.

Pech, L., Platon, S. (2018). Judicial independence under threat: The Court of Justice to the rescue in the ASJP case. *Common Market Law Review, 55,* 1827-1854.

Peers, S. (2019, March, 21). Brexit and extending EU membership: The legal issue. *EU Law Analysis:* http://eulawanalysis.blogspot.com/2019/03/brexit-and-extending-eu-membership.html

Peeters, M., Eliantonio, M. (2020). *Research handbook on European Union environmental law.* Edward Elgar Publisher, Cheltenahm, 77ss.

Pers, S. (2015). The EU's Accession to the ECHR: The dream becomes a nightmare. *German Law Journal, 16,* 213, 222.

Petite, M. (2015). The battle over Strasbourg: The protection of human rights across Europe has suffered a setback, thanks to the Court of Justice of the European Union. *Competition Law Insight,* 10ss.

Picod, F. (2015). *La Cour de justice a dit non à l'adhésion de l'Union européenne à la Convention EDH.* La Semaine Juridique, Édition Générale, 230, 234.

Piris, J.C. (2006). *Le Traité Constitutionnel pour l'Europe: une analyse juridique.* ed. Bruylant, Bruxelles, 155ss.

Platon, S. (2019). Les fonctions du standard de l'etat de droit en droit de l'Union europèenne. *Revue Trimestrielle du Droit Europèenne, 15 (2),* 306ss.

Poiares Maduro, P., Wind, M. (2017). *The transformation of Europe: Twenty-five years on.* Cambridge University Press, Cambridge, 321ss.

Poinsignon, D. (2018). Le retrait de l'Union européenne et le statut d'État membre: le cas du Brexit. In L. Potvin-Solis (dir.). *Le statut d'État membre de l'Union européenne.* ed. Larcier, Bruxelles, 582ss.

Polakiewicz, J. (2013). EU law and the ECHR: Will the European Union's accession square the circle?. *European Human Rights Law Review, 6,* 592-605.

Ponzano, P. (2011). Mèthode intergouvernementale ou mèthode communautaire: Une querelle sans intèrêt?. *Notre Europe. Les Brefs, n. 23.*

Popov, A. (2019). L'arrêt Wightman: De la consécration du droit de révocation unilatérale de la notification de retrait de l'Union européenne à la consolidation de la jurisprudence sur les actions déclaratoires préventives utilisées en vue de provoquer un renvoi préjudiciel. *Cahiers de Droit Européen, 17 (2),* 313ss.

Potteau, A. (2011). Quelle adhésion de l'Union Européenne à la CEDH pour quel niveau de protection des droits et de l'autonomie de l'ordre juridique de l'UE?. *Revue Générale Droit International Public, 115,* 77-111.

Raitio, J., Paulus, H. (2017). The UK-EU referendum and the move towards brexit. *Maastricht Journal of European and Comparative Law, 24 (1),* 28ss.

Rasmussen, M., Sindbjerg Martinsen, D. (2019). European Union constitutionalisation revisited: Redressing a central assumption in European studies. *European Law Journal, 25 (3),* 260ss.

Roberts, R. (2019). Social security coordination after brexit. Trying to take an egg out of an omelette?. *ERA Forum, 20,*

535ss.

Roes, T. (2015). Limits to loyalty: The relevance of article 4(3) TEU. *Cahiers de Droit Européen, 27,* 260ss.

Rosas, A., Armati, L. (2018). *European Union constitutional law: An introduction.* Bloomsbury Publishing, New York, 2018.

Sari, A. (2017). Reversing a withdrawal notification under article 50 TEU: Can a Member State change its mind?. *European Law Review, 42 (4),* 454ss.

Schmahl, S. (2019). *The national identity criterion in the crossfire between European integration and the preservation of national sovereignty.* ed. Springer, Berlin.

Schütze, R. (2009). On "federal" ground: The European Union as an (inter)national phenomenon. *Common Market Law Review, 46 (4),* 1069, 1089.

Schütze, R., Tridimas, T. (2018). *Oxford principles of European Union Law.* Oxford University Press, Oxford.

Schwarze, J., Becker, V., Hatje, A., Schoo, J. (2019). *EU-Kommentar.* Nomos, Baden-Baden.

Smith, E. (2013). Running before we can walk? Mutual recognition at the expense of fair trials in Europe's Area of Freedom, Justice and Security. *New Journal of European Criminal Law, 3 (1),* 82ss.

Sowery, K. (2016). Equivalent treatment of union rights under national procedural law: Târsia. *Common Market Law Review,*

53, 1705-1726.

Spaventa, E. (2015). A very fearful Court? The protection of fundamental rights in the European Union after Opinion 2/13. *Maastricht Journal of European and Comparative Law, 22,* 51ss.

Steinz, R. (2018). Principles and values in the European Union. *Europarecht, 40,* 10ss.

Swoboda, S. (2015). The self-perception of the European Court of Justice and its neglect of the defense perspective in its preliminary rulings on judicial cooperation in criminal matters: A small note on a fundamental misunderstanding. *Zeitschrift für Internationale Strafrechtsdogmatik,* 361ss.

Sybesma-Knol, N. (2014). The European system for the promotion and protection of human rights. *Georgia Journal of International & Comparative Law, 20.*

Tatham, A.F. (2012). "Don't mention divorce at the wedding, Darling!": EU accession and withdrawal after Lisbon. In A. Biondi, A., Eechout, P. (eds). *EU Law after Lisbon*. Oxford University Press, 152ss.

Temple Lang, J. (2008). Article 10 EC. The most important "general principle" of community law. In U. Bernitz and others, (eds.). *General principles of EC law in a process of development.* Wolters Kluwer, Alphen aan de Rijn, 77.

Tinsley, A. (2013). Protecting criminal defence rights through

EU Law: Opportunities and challenges. *New Journal of European Criminal Law, 3 (3),* 461ss.

Torres Perez, A. (2013). Too many voices? The prior involvement of the Court of Justice of the European Union?. *European Journal of Human Rights, 40,* 565-583.

Tovo, C. (2017). Delegation of legislative powers in the EU: How EU Institutions have eluded the Lisbon reform. *European Law Review, 42 (5),* 680ss.

Tovo, C. (2018). Constitutionalising the European Court of Justice? The role of structural and procedural reforms. *Italian Journal of Public Law, 10 (2),* 460-461.

Usherwood, J., Pinder, S. (2018). *The European Union. A very short introduction.* Oxford University Press, Oxford.

Van Der Mei, A.P. (2016). European Union external relations and internal international institutional conflicts. The battlefield of aticle 218 TFEU. *Maastricht Journal of European and Comparative Law, 23 (6),* 1054ss.

Vara, J.S., Rodrìguez Sànchez-Tabernero, S. (2018). *The democratisation of European Union international relations through European Union law.* Routledge, London & New York

Varju, M. (2019). *Member State interests and EU law: Revisiting the foundations of member State obligations*. ed. Routledge, London/New York.

Vervaele, A.E. (2015). Mutual legal assistance in criminal

matters to control (transnational) criminality. In N. Boister, R.J. Currie (eds.). *Handbook of transnational criminal law.* ed. Routledge, London & New York, 2015, pp. 123ss.

Virseda Fernàndez, C. (2020). *Uniòn europea.* Editorial Aranzadi, Pamplona.

Von Bogdandy, A., Bast, J. (2009). *Principles of European constitutional law.* Bloomsbury Publishing, New York.

Wessel, R.A., Larik, J. (2020). *European Union external relations law. Text, cases and materials.* Bloomsbury Publishing, New York.

Wessel, R.A., Łazowski, A. (2015). When Caveats Turn into Locks: Opinion 2/13 on Accession of the European Union to the ECHR. *German Law Journal, 16*, 179ss.

Weyembergh, A., De Hert, P., Paepe, P. (2007). L'effectivité du troisième pilier de l'Union européenne et l'exigence de l'interprétation conforme: la Cour de justice pose ses jalons: (note sous l'arrêt Pupino du 16 juin 2005, de la Cour de justice des Communautés européennes). *Revue Trimestrielle des Droits de l'Homme, 72,* 269-292.

Woods, L., Watson, P. (2017). *Steiner & Woods European Union law.* Oxford University Press, Oxford, 37ss.

Zipperle, N. (2017). *EU international agreements. An analysis of direct effect and judicial review pre and post-Lisbon.* Springer, Berlin.